EXHIBIT B51

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

IN RE: JOHNSON & JOHNSON TALCUM POWDER PRODUCTS MARKETING, SALES PRACTICES AND PRODUCTS LIABILITY LITIGATION THIS DOCUMENT RELATES TO ALL CASES	MDL NO. 16-2738(FLW)(LHG)

PURSUANT TO NOTICE, the 30(b)(6) deposition of IMERYS TALC AMERICA, INC., through the testimony of PATRICK DOWNEY, VOLUME II, was taken on behalf of the Plaintiffs, at Gordon & Rees, 555 Seventeenth Street, Suite 3400, Denver, Colorado, on August 8, 2018, commencing at 9:02 a.m., before Melanie L. Giamarco, Registered Professional Reporter, Certified Realtime Reporter, and Notary Public within Colorado.

Page 260

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Page 261

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Page 262

INDEX

EXHIBITS

Page 263

(Cont'd)
EXHIBITS

(Cont'd)
E X H I B I T S

(Cont'd)
E X H I B I T S

(Cont'd)
E X H I B I T S

P R O C E E D I N G S

VIDEOGRAPHER: Good morning. We are on the record at 9:02 a.m. Today is August 8, 2018. This begins Volume 2 of the video deposition of Pat Downey in the Johnson & Johnson Talcum Powder Products, Marketing, Sales Practices, and Products Liabilities Litigation.

The court reporter, please swear in the witness.

PATRICK DOWNEY,

after having been duly sworn, was examined and testified as follows:

EXAMINATION

BY MS. O'DELL:

Q. Good morning, Mr. Downey.

A. Good morning.

Q. Yesterday when we took day one of your deposition, we were talking about the concept of selective mining; do you recall that?

A. Yes.

Q. And you described the process of a large machine with a bucket picking up rocks from the pit after it's been blasted and there's ore there to be removed. You talked about that bucket picking it up, putting it in rocks, and that's really the

Page 268

process -- excuse me, putting it in the truck bed -- that's really the process of selective mining. I mean, is that a fair summary? Or would you like to edit that in any way?

A. That's one component. There's a lot of things that go into it, as I mentioned yesterday.

Q. And so in terms of that portion of selective mining, what happens with the equipment operator and the truck driver, would that be a fair summary? He actually -- the equipment operator selects a rock or rocks, picks it up in the bucket, puts it into the truck.

MR. PROST: Object to form.

Q. (By Ms. O'Dell) Correct?

A. I'm not sure what your question is.

Q. Well, I guess I'll just ask you again. I thought my question was clear.

A portion of the selective mining process happens at the equipment-operator stage. And the particular equipment I'm referring to is either the excavator or a front-end loader, correct?

A. Generally, yes, yes.

Q. And that operator, that equipment operator, when, in the process of loading trucks to be -- for the ore to be trucked to West Windsor and

Page 269

Argonaut, for example, that operator, that equipment operator, will select certain ore to place in the truck for purposes of being taken to West Windsor?

MR. PROST: Object to form.

A. Generally so, yes. The operator is digging the rock, but also in an informed way.

Q. (By Ms. O'Dell) Okay. I'm going to show you -- and I'll show it to you and then I'm going to -- I only have one copy, so I'll need to put it on the screen to ask you questions. But I'll mark as Exhibit 24 a PowerPoint called "Luzenac America Argonaut Mine Vermont."

(Exhibit 24 was marked for identification.)

Q. (By Ms. O'Dell) Have you seen that before?

MR. SILVER: Leigh, is there a Bates number?

MS. O'DELL: You know, it was produced as a native file, so it does have a Bates number, but it doesn't appear on the copy.

MR. SILVER: Are you able to just tell us what it is? I'm trying to figure out, is it our document? Is it their document?

MS. O'DELL: It's one of the newly produced documents in the 1600. It was produced on Friday

Page 270

evening.

MR. PROST: Do you have any other --

MS. O'DELL: And we can give you the Bates number.

MR. PROST: Do you have an additional copy of it?

MS. O'DELL: You know, I only have one copy.

THE WITNESS: Do you want one?

MR. SILVER: You look first and then --

MR. PROST: You look first.

MR. SILVER: -- and then when we take a break, we can get a copy.

A. (Document reviewed.)

Q. (By Ms. O'Dell) Mr. Downey, have you seen that document before?

A. I don't think I've seen this one. Certain slides are familiar, but they were not -- I've seen them in different presentations.

Q. I have a really simple question to ask you about it. So if you want to take a high-level look -- I have two simple questions. Thank you, sir. I need that back.

A. Oh, you need that back?

Q. Yeah. Thank you.

So this is --

Page 271

MR. PROST: Are you going to be asking questions throughout the document? Because if so, if we could just make a quick copy of it, I'd appreciate it, just so I can have one.

MS. O'DELL: Oh, Mark, I'm going to ask just about a couple of the photos and that's it.

MR. PROST: Okay.

Q. (By Ms. O'Dell) So this is a PowerPoint presentation that we've marked as Exhibit 24. The Bates number is IMERYS 499781.

And this is a PowerPoint presentation that outlines the location, geology, history, part of the mine process, the ore, mine plan, mine plan methods, et cetera, for the Argonaut Mine, correct?

A. Generally so. I had briefly perused it.

Q. And I had started asking you questions about what actually happens in the pit with the equipment operator and -- I call that an excavator. Is that what you call that?

A. Yes.

Q. And excavator operator and the process of loading a truck.

And so this is the load-and-haul process from the Argonaut pit, correct?

A. That's an exemplar photo, yes.

Page 272

Q. We talked about, yesterday, the employment of computer programs to create models of ore bodies -- and I don't know if you recall that discussion -- and how data from the general geology, data from core logs, core drilling, is inputted into a computer system and models are created for purposes of mine planning; do you recall that?
A. Yes.
Q. And would this be an exemplar photo of an ore body model of the Argonaut Mine?
A. Can you hand it back so I can see it a little bit further?
Q. Oh, sure.
A. (Document reviewed.)
Q. And Mr. Downey, just to get back to my question, this photo, or this slide, depicts the ore-body model for the Argonaut Mine, true?
A. I would say that that's an exemplar of some attribute of the Argonaut ore body, but what attributes are being shown there are not identified.
Q. And this is certainly -- this would be part of the model. You're saying it's not the complete model, but it's part of the model of the

Page 273

Argonaut ore body, yes?
A. Well, to the -- it says "ore body model," and to the extent that it's included in a document about Argonaut, I would say that that's part of the Argonaut model, but that's not a complete model.
Q. And if you'll look at this, Mr. Downey, this model and the ore that's depicted in this model, I'm not asking you to go through it in detail, but it's fair to say there's variability in the talc veins within this ore body, correct?
MR. PROST: Object to form.
Do you need to look at the document?
A. The attributes of what's being displayed there are not identified.
Q. (By Ms. O'Dell) And in terms of -- let me ask you this: Do you know what portion of this model depicts talc?
A. I can't tell from that document.
Q. Have you ever seen a model of the Argonaut ore body?
A. In what respect?
Q. In any respect.
A. Well, that presentation also has a cross-section that shows the ore body.

Page 274

Q. And that's true, but that's not really what I asked you.
I'm asking you, in any respect, in preparation for your deposition, in conjunction with your work as an employee of Imerys, have you ever reviewed the computerized ore-body model of the Argonaut Mine? Yes or no?
MR. PROST: Object to form.
A. I may have been shown it in the past, or parts of it. I don't recall any specifics at this time.
Q. (By Ms. O'Dell) You don't know, one way or the other, if you've seen the computer model? As you're sitting here today, you cannot testify, under oath, that you --
A. I can't recall.
Q. Let me show you one more map in this PowerPoint.
Mr. Downey, this is -- according to this, this is a geology map, or a geological map, that depicts the Argonaut Mine.
And what portion of this is talc?
MR. PROST: Object to --
A. Can you hand it to me?
Q. (By Ms. O'Dell) Yeah, sure.

Page 275

MR. PROST: Objection to form.
A. (Document reviewed.) Again, the attributes of what are being depicted aren't shown.
Q. And can you identify talc in this geological map?
A. I can't even tell if they were intending to try to display talc.
MR. SILVER: Leigh, just for clarification, because, again, this document -- I -- you say it was reproduced in a native, correct? Did we produce it in color? Did we produce it in a black and white? It was in color? Okay.
Q. (By Ms. O'Dell) Let me show you -- I'm not sure if it'll show up. There's a glare on the screen, but does that help you? I'll just hand it to you. This is the native version.
Does that help you understand what's being shown in this geological map?
A. No.
Q. And to be clear for the record, you cannot identify in this geological map, even in color, what portion of that map is talc, correct?
A. Again, the map is not labeled as to what attribute they're trying to identify. For all I know, it could be brightness or some other

Page 276

attribute.
Q. In terms of the minerals involved, my question is, can you identify talc in that photo? And my understanding of your testimony is that you cannot.
A. It's not labeled. I can't -- from that document, I can't tell anything about it.
Q. Put that aside, Mr. Downey. Let me -- we had some discussions yesterday, a little bit just a moment ago, about the lack of uniformity in talc veins within the ore body, or within a deposit. And what I want to focus on is the emphasis on ore-body control. That was a major focus at the Argonaut Mine, true? Just having control over what ore was being removed from the deposit, true?
MR. PROST: Object to form.
A. Generally speaking, we employed selective mining as part of the ore-control procedures.
Q. (By Ms. O'Dell) And that ore-control procedures was necessary because there is variability in the minerals contained in the deposit, true?
A. I'm not sure what you mean by

Page 277

"variability" or which minerals you're talking about.
Q. Okay. So if the deposit contains not only talc, but schist, serpentine, cinders within the same area, in other words, within the same deposit, that's why it's necessary to maintain ore control during selective mining process, correct?
A. Generally speaking, selective mining is employed for a variety of reasons to control the quality of the ore that is sent to the milling facilities for further processing.
Q. And part of ensuring the quality of the ore is ensuring that contaminants are not contained within the ore that's sent to the mill for processing, true?
A. Yes.
Q. And that would not be necessary unless the ore was -- excuse me, the deposit was variable in nature in terms of its components, correct?
MR. PROST: Object to form.
A. Again, vary -- you're -- I'm not sure how you're using "variable," but in relationship to now certain rock types are in contact with others, as we employ selective mining, the orientation of the ore and the other rocks is considered when we

Page 278

are mining.
Q. (By Ms. O'Dell) Would it be fair to say that in relation to the Argonaut Mine, the ore-control process was rudimentary?
A. I don't know.
Q. Don't know.
Let me ask you to look at what I'm marking as Exhibit 25.
(Exhibit 25 was marked for identification.)
Q. (By Ms. O'Dell) And Mr. Downey, you're familiar with Ed McCarthy?
A. Yes.
Q. And Mr. McCarthy was the technical director -- or one of the technical directors at Rio Tinto Minerals and later Imerys, correct?
A. Yes.
Q. And this is a memorandum that Mr. McCarthy wrote to Katia Ray. It's regarding the Vermont market plant, 2006 to 2010, and it's dated July 31st, 2006; do you see that?
A. Yes.
Q. And it is -- as it says, it's talking about the Vermont mines. And specifically, I'm going to ask you to turn over to page ending 825. And at this time period, the only active mine in

Page 279

Vermont in the early 2000s would have been Argonaut, correct?
A. Correct.
Q. And Mr. McCarthy describes the present situation at the Vermont facility; do you see that?
A. I see a paragraph with the header "Present Situation." I haven't read it.
Q. If you'll look at sentence number two, Mr. McCarthy writes, "It is very critical that care be exercised near the limits of the talc zones as serpentine and arsenic are commonly found there. In theory, the ore is segregated by talc content, color, and arsenic content at the mine face, but in actuality, mine ore control is rudimentary and is generally based on post-milling rather than drill-hole analyses"; did I read that correctly?
A. That's what it says.
Q. You may put that aside, Mr. Downey.
We also talked a bit yesterday in relation to the Hamm Mine about the drilling process. We reviewed a core log. And now we're going to do that in relation to the Argonaut Mine.
Before I do, I want to show you -- I'm just going to show you a picture. I think it'll be fair.

Page 280

MS. O'DELL: This is another Luzenac America Argonaut Mine Vermont slide deck that was produced to us in the litigation. I'm going to mark it as Exhibit 26.
(Exhibit 26 was marked for identification.)
MS. O'DELL: And I'll provide the Bates number for the record in just a moment.
Q. (By Ms. O'Dell) I'm only going to ask you, really, a couple of questions just about some photos just to give the jury context.
Would this be a picture of how drill cores are maintained over the years? So that -- what I'm pointing to, that's a drill core, correct?
A. Can I see it closer?
Q. Yeah, sure.
A. (Document reviewed.)
MS. O'DELL: And for the record, Exhibit 26 is IMERYS 499765.
Q. (By Ms. O'Dell) Thank you. Can you see that, Mr. Downey?
A. (Nodded head.)
Q. Pointing out with my pen here what looks like a cylinder-like piece of material or rock.
A. That's drill core.
Q. And that's drill core?

Page 281

A. Yes.
Q. And drill core is historically maintained in boxes that look something like this, correct?
A. Yes. I've also -- at other places where I've seen core, not specifically Argonaut, they can be in cardboard boxes.
Q. Cardboard boxes, wooden boxes, something like that?
A. Mm-hmm.
Q. And when we've talked about drill core and we read the logs, basically, we're reading what the geologist has noted as he or she has reviewed just the core on a foot-by-foot basis, correct?
A. Generally so, yes.
Q. And so I'm just using this as a picture to give the jury a better understanding of what we're describing.
So we look at a core log, we start at a point, let's say that that point is the surface of the earth, that would be zero, and then it goes down by feet, and basically, the drill captures material, and it's logged by foot, and then that geologist looks at the particular core that's been

Page 282

removed and makes a description of what he or she sees in terms of the mineralogy, fair?
A. Fair.
Q. And data from those cores can then be inputted like this into a program -- and Techbase is a program that creates geological models, correct?
A. Yes. Techbase is a mine-planning software.
Q. And then data from the core -- cores, as documented in the core logs, is inputted into software like Techbase, and then, from that software, takes those data points and basically creates the model of the ore body, true?
A. Are you saying that that's what the software does?
Q. Yes. They generate the -- they generate the computer model.
A. Well, the software is a tool, but it's based on the geologist's interpretation.
Q. And the geologist has input, but ultimately, the software generates the model.
And a lot of the data that is used to create the model is from the cores that have been drilled in that particular mine, true?

Page 283

A. There's cores and there are other information, but the software itself doesn't generate the model on its own. It's not autonomous.
Q. Well, Mr. Downey -- and I don't think that my question suggested I thought that the software was autonomous.
It's a tool that geologists use to create a model of an ore body, true?
MR. PROST: Object to form.
A. Yes. I said it was a tool.
Q. (By Ms. O'Dell) And they're creating a picture of the ore body, correct?
A. They are --
Q. A 3D picture, but a picture of the ore body, a model.
A. The mine-planning software is used to make a three-dimensional model of the ore body, and many different types of parameters can be modeled.
Q. And to use an analogy, if you're thinking of a picture, the more pixels in a picture, the more clear the resolution is, the better quality the picture, true?
A. Generally speaking, yeah.
Q. And if you use that analogy and you

Page 284

applied it to this context of creating a geological model of the ore body using Argonaut as example, the more information, or in other words, the more pixels that you have, the better the model. That's fair?

A. Generally so, yes.

Q. And one of the data points or pixels in the process of creating an ore-body model is the data that's taken from the drill cores, true?

A. One of the pixels? I don't quite follow that as an analogy.

Q. All right. Let me turn your attention to Exhibit 27.

(Exhibit 27 was marked for identification.)

MS. O'DELL: It's Bates number IMERYS 427326.

Q. (By Ms. O'Dell) Have you seen this document before?

A. No.

Q. And if you'll turn to page 1 in the document.

A. Meaning not the cover?

Q. Yeah, excuse me. Page 2. Page 2 in the document.

These notes appear to be notes made of drill

Page 285

cores from 1972; do you see that?

A. I see dates in August of '72.

Q. So this is August 31st, 1972. And these are notes that were made for four holes, it appears -- or three holes that were drilled at Argonaut; do you see that?

A. I don't see any indication of Argonaut.

Q. And let me ask you just to assume -- and I'm going to show you in just a moment that these, in fact, appear to be from Argonaut, but all I've got -- and I'll show you this document, which is page 332. It notes "Argonaut."

A. Is that in this stack?

Q. Yes. Page 332.

MR. PROST: Object to form.

Q. (By Ms. O'Dell) It notes "Argonaut," correct, at the top of the page?

A. "Location corrections Argonaut," it's a different date. I don't know if it correlates to the 1972 information in the front or not.

Q. Okay. Let me take you back to page 2 of the exhibit. When you look at the upper-left portion of the page, you'll see a notation "1-R-72 35 degrees"; do you see that?

A. Okay.

Page 286

Q. And that appears to depict a hole that was drilled in 1972 at an angle of 35 degrees; would you agree with that?

A. I can't tell if that's a dip or a bearing. It just says "35 degrees." I can't tell anything further.

Q. And the notes are made from, it appears, zero to 72 feet and 6 inches; do you see that? And then it says "HW."

A. That's what it says.

Q. And "HW" means hanging wall; would you agree with me on that point?

A. It might.

Q. And what else might it stand for in the context of a core log like this?

A. I don't know. I've -- I'm just seeing this document for the first time.

Q. Have you reviewed, in preparation for your deposition, core logs for the Argonaut Mine?

A. I have reviewed a few.

Q. For Argonaut or for another mine?

A. For Argonaut.

Q. And what Argonaut cores did you review?

A. I don't recall the numbers. I --

Q. You did not review this notation of the

Page 287

cores drilled in 1972?

A. I don't recall.

Q. And if you'll look, as it goes down in hole number 1, you'll see, from 177 feet to 179, it says "cinder and chlorite"; do you see that?

A. Yes.

Q. And moving down further, from 180 feet to 181 feet below surface, it notes "cinder"; do you see that?

A. Yes.

Q. And so this appears to be a core that was drilled in 1972?

MR. PROST: Object to form.

A. It appears that the drill-hole number is 1-R-72. I would assume that means 1972.

Q. (By Ms. O'Dell) Typically the year the hole is drilled is in the reference to that specific hole, correct?

A. Typically it is, yes.

Q. And so if you'll look to the right, you see the 2-R also appears to be '72.

And Mr. Downey, what minerals were found at 124 feet, 2 inches, to 131 feet?

A. Cinder chloride.

Q. And at 153 feet, what was found?

Page 288

A. Cinder.
Q. At 154 feet to 167, what was found?
A. It says "talc."
Q. And then 167 to 176 feet, what was found?
A. It says "cinder."
Q. And then we see another two feet of talc, correct, from 176 feet to 178?
A. Yes.
Q. And then, again, 178 to 181, there's more cinder?
A. Yes.
Q. If you'll look at the third hole on the left-hand -- lower left-hand portion of the document, at 119 to -- 119 feet to 123 feet, there was talcos limestone; do you see that?
A. That's what it says.
Q. And then from 123 feet to 127 feet, what was located? What was found?
A. It says "grading to serpentinite."
Q. And then 127 feet to 139 feet was, again, serpentinite, correct?
A. That's what it says.
Q. If you'll turn over to the next page, Mr. Downey, I would direct your attention to the

Page 289

lower-right portion of the page. You'll see the eighth hole, R72; do you see that?
A. Yes.
Q. And in this instance, the bearing was north 85 west, and then it was -- this hole was drilled at an angle of 45 degrees; do you see that?
A. Yes.
Q. And then, if you'll look at 276 feet to 280 feet, what was found?
A. I can't tell what that says. Something "talc."
Q. Okay. It's some type of talc. And then if you look lower to 286 to 312 feet, there's serpentinite; would you agree me on that? Blocky serpentinite?
A. At which interval?
Q. 286 feet to 312 feet?
A. Is it says "serp." It's abbreviated, and it says "blocky."
Q. Serpentinite is abbreviated as "serp," correct?
A. That's what it appears.
Q. Yes. And then there's another segment of serpentinite from 312 to 326 feet, correct?
A. That's what it says.

Page 290

Q. And you have no reason to believe the geologist who made these notes of their examination of the drill cores, that they made an error, do you?
A. I can't tell from this.
Q. You have no reason to doubt that this is an accurate evaluation of the cores, do you, Mr. Downey?
MR. PROST: Object to form.
A. I can't tell, one way or another. These are handwritten notes.
Q. (By Ms. O'Dell) You haven't reviewed the cores yourself?
A. No.
Q. You're not -- that's not something you do in your activities as an employee of Imerys, true?
A. True.
Q. Okay. 300 -- excuse me. At foot 326 to 335, it denotes "serpentinite talc zone"; do you see that?
A. Yes.
Q. I ask you to turn over one page, Bates ending 329; do you see that?
A. Yes.

Page 291

Q. And at the top of the page, there's a reference to "12-R-73." My understanding of that notation is that's the 12th hole that was drilled in 1973; is that a fair interpretation?
A. That seems fair, yes.
Q. And then the lower portion of the page would be the 13th hole drilled in 1973?
A. That seems fair.
Q. Are you aware of how many holes were drilled during the 1973 drilling program in Argonaut, or core logs, to be specific?
A. I don't recall how many were.
Q. If you'll turn over just quickly to the next page, you'll see the 14th hole that was drilled, 1973. It was 70 degrees to the west.
It appears that this hole was drilled to 400 -- a depth of 457 feet, correct?
A. That's what it seems to say.
Q. And it says, "medium to high grade."
And would you agree with me that likely refers to talc?
A. Likely, yes.
Q. And then that medium- to high-grade talc occurred at 21 to 26 feet.
And then from 26 to 299 feet, there was

Page 292

schist, correct?
A. Yes.
Q. And then there was another portion of talc from 299 to 315 feet, and that was chlorite plus some talc?
A. That's what it says.
Q. And then from 315 feet to 340 feet, there was a zone of very high-grade talc, correct?
A. That seems likely.
Q. And this depiction is consistent with what we read yesterday, that often where you find very high-grade talc, it is contiguous with zones of chlorite or, in some cases, as -- well, zones of chlorite. Let me stop there.
MR. PROST: Object to form.
A. Can you repeat your question?
Q. (By Ms. O'Dell) Yeah. I'm sorry. I didn't ask a very good one.
This depiction is consistent with what we read yesterday, that often where you find very high-grade talc -- changed my question to make it more clear -- it is right next to zones of chlorite.
MR. PROST: Object to form.
Q. (By Ms. O'Dell) True?

Page 293

A. There may have been a report that we looked at yesterday. We can refer back to that, if necessary.
Q. But another just very quick question. This is a map that's contained in this document. Turn it right there. It's on page 333, if you'd like to turn to it.
Just so I can -- the jury understands, this is a map that depicts where certain drill holes or cores were taken; does it not? For example, if you'll look in the middle of the page, I've highlighted one, and it appears to be from a core taken during 1972; do you see that?
A. Can you blow it up, expand it? Okay.
Q. 1972.
A. Yes.
Q. And what I'm asking is that this is a map that basically plots out the cores, the drill cores, that were taken in 1972 -- appears to be just 1972 -- and then some of 1973, correct?
MR. PROST: Object to form.
Q. (By Ms. O'Dell) Maybe I can help here. I've shown -- I've pointed out a 1972 drill core. And if you'll look at that one, this is the location of the 12th hole of the 1973 core

Page 294

drilling, true?
A. That seems fair, yes.
Q. I'm going to ask you to turn, in the same document, to page Bates ending 351. Page 351, okay? Do you see that?
This is the core log that was made in relation to hole number 5-R-72; do you see that?
MR. PROST: Object to form.
A. That seems fair.
MS. O'DELL: What was the objection, Mark?
MR. PROST: This is a 1972 or '3 document. I don't think he knows who generated it. He's not certain what mine necessarily it's from based on this one page. It's foundation, basically.
Q. (By Ms. O'Dell) All right. This is hole 5-R-72, correct?
A. That's what it says on the header.
Q. Okay. Keep going. And for the moment, I'm going to ask you to assume this is from Argonaut. And I'll show it to you on the map in just a minute. I want to take care of the objection.
So this is hole 5-R-72. This was started on July 9th, 1973; do you see that?
A. Yes.

Page 295

Q. And if you'll look at -- it says "From" and "To." That's feet, correct?
A. Generally that's what it is.
Q. And so from 8 feet to 210 feet, you see a description of the geology in the right-most column; do you see that? It says, "Dark blue-gray serpentinite with accessory magnetite plus carbonate vein outer margin or foot wall side contains shear cones with asbestiform minerals"; did I read that correctly?
MR. PROST: Objection.
A. Some of the handwriting could be better. I don't know if it's "ore" or "on." "Cones" doesn't make sense to me.
Q. (By Ms. O'Dell) Okay. But it's clear that it says -- that geologist identified asbestiform minerals, correct?
MR. PROST: Object to form.
A. That's what it says.
Q. (By Ms. O'Dell) Then, I'm turning back page 333, the map we looked at previously in the exhibit, and this is a map, just so -- this Argonaut Mine, right? It's an Argonaut Mine map, correct?
MR. PROST: Object to foundation.

Page 296

A. That's what it says.
Q. (By Ms. O'Dell) I didn't hear you, sir.
A. That's what it says.
Q. Yes. Then you see notation for hole 5-R-73; do you see that?
A. I can't tell if that's a 3 or a 5.
Q. Okay. This is 3 -- this is 3 here, and wouldn't it be -- oops, sorry. Wouldn't it be fair to say that that's 5? There's another 3 -- hole 3 for 1973 on the map, that we can assume that that is the fifth hole, 5-R-73. It's a fair assumption, isn't it, there?
A. You were zooming around there and I can't see where you're saying that was.
Q. All right. Are you challenging, Mr. Downey, that the core log I have just walked you through, 5-R-72, originates from a mine other than Argonaut? Is that your testimony?
MR. PROST: Object to form.
A. I can't tell -- the one that you pointed to that you indicated was hole number 5, I can't tell if that's what it says. That's all I'm saying.
Q. (By Ms. O'Dell) This is a map that was created in relation -- I'll turn it around this

Page 297

way, it makes it more clear -- in relation to 5-R-72; do you see that? Do you see that?
A. What page are we on?
Q. The next page. The page in front of you.
MR. PROST: What's the page number?
THE WITNESS: 352.
MR. PROST: Thanks.
Q. (By Ms. O'Dell) See that 5-R-72?
A. Yes.
Q. And that's the -- we've been looking at and examining the cores from that hole that was drilled, correct? Yes?
A. In the previous page?
Q. Yes.
A. And this picture, Mr. Downey, and where that hole takes place, is consistent with what we were looking at before and identifying as 5-R-72, correct?
MR. PROST: Object to form.
A. I don't know what you mean by "it's consistent with." I haven't had time to interpret the document.
Q. (By Ms. O'Dell) Well, you had eight weeks to get prepared for your deposition,

Page 298

Mr. Downey --
MR. PROST: Objection. Please ask a question.
Q. (By Ms. O'Dell) -- and so, I mean -- and part of the topics that you've been put forward for is core logs. It's very clear. It's front and center.
MR. PROST: Do you have a question?
MS. O'DELL: I do have a question.
Q. (By Ms. O'Dell) And so I'm asking, do you dispute that the core log that we just looked at is a log that was taken from a core removed from the Argonaut Mine? Are you disputing that?
MR. PROST: Object to foundation.
Q. (By Ms. O'Dell) Yes or no?
A. No.
Q. Okay. That's all I wanted to . . .
Let me ask you to turn to 363. And this is from hole 8-R-72; do you see that?
A. Yes.
Q. We see from foot 40 to 41 you have noted "biotite, chlorite, talc, schist"; do you see that?
A. Yes.
Q. And then below, from foot 89 to 102, you see "proportions of chlorite dogtooth spar,

Page 299

crystals in fracture at 95 feet"; do you see that?
A. At 89 to 102?
Q. It's in that section, and it's in the description on the right-hand side of the page; do you see that, sir? I've highlighted it on the screen.
A. That's what it says.
Q. And that occurred at 95 feet?
A. I'm not seeing it on the "From," "To." Where's the 95? I'm sorry. I'm . . .
Q. "Fractures at 95 feet," correct?
A. Oh, okay. Yes. I was looking for it on the "From," "To." Sorry.
MS. O'DELL: We've been going about an hour. Let's take a quick break.
MR. PROST: Okay.
VIDEOGRAPHER: Off the record at 10:03.
(Recess taken.)
VIDEOGRAPHER: We are back on the record at 10:46.
Q. (By Ms. O'Dell) Mr. Downey, we were looking at some core logs prior to the break. And I would ask you, in regard to core logs, it was your role as a 30(b)(6) representative of Imerys to review core logs in preparation for your deposition

Page 300

here today. That's one of the clear topics that's listed in the outline.
How many core logs did you review in preparation for your deposition?
A. I don't recall a specific number. I don't recall.
Q. Did you undertake to review all of the core logs from the mines in Vermont that were used to supply talc to J&J?
A. The core logs that I did review were to Argonaut.
Q. So the answer to my question is "no"?
A. The ones I reviewed were for Argonaut, yes.
Q. You did not review core logs for the Hamm Mine, correct?
A. Correct.
MR. PROST: Object to form to form.
Q. (By Ms. O'Dell) You did not review core logs for Rainbow, correct?
A. Correct.
Q. You did not review core logs for the Hammondsville Mine, correct?
A. Correct.
Q. How long -- and your testimony was you

Page 301

reviewed some core logs for the Argonaut Mine?
A. Yes.
Q. Did you review all of them?
A. I don't believe so.
Q. How did you spend reviewing core logs in your preparation?
A. Probably more than an hour, I think. There's a lot of information that I needed to prepare for, so I tried to sample as much as I could to be familiar with the information.
Q. During that hour you spent reviewing core logs, which core logs did you review? What year did they arise from?
A. I tried to sample a variety. I don't recall the specific years.
Q. Did any of the core logs -- well, let me say, were the core logs selected for you by counsel?
A. No.
Q. They were provided to you by counsel, correct?
A. Some, but the core logs also were provided by Mr. Marek.
Q. Did you review core logs during your discussions with Mr. Marek?

Page 302

A. Did I review them with him?
Q. Yes.
A. No. He provided them, and I reviewed them later.
Q. Did any of the core logs that you were provided by Mr. Marek show asbestiform?
MR. PROST: Object to form.
A. One of them -- well, it didn't use the word "asbestiform" by name, or use that word, the one that I'm thinking of, but it did indicate that fibers were found.
Q. (By Ms. O'Dell) What type of fibers?
A. In the log, it didn't identify the fibers.
Q. Did you later learn what type of fibers were located or identified.
(Announcement over the intercom.)
VIDEOGRAPHER: Off the record at 10:51.
(Recess taken.)
VIDEOGRAPHER: Back on the record at 11:10.
Q. (By Ms. O'Dell) Mr. Downey, I was asking you some questions about core logs and your knowledge about them before the fire drill, literally.
Who would be in the best position at Imerys

Page 303

to answer questions about core logs from the Vermont mines?
MR. PROST: Object to form.
A. What do you mean by "in the best position"?
Q. (By Ms. O'Dell) Who would have information and personal knowledge and be able to testify regarding core logs from the Vermont mines?
MR. SILVER: Objection.
A. I've prepared, as best as I can, given all of the topics that were in the notice for me to be able to discuss.
Q. (By Ms. O'Dell) And can you provide a name of another employee at Imerys who would have personal knowledge and information regarding the core logs from the mines in Vermont?
MR. PROST: Object to form. You mean besides names he's given you already?
MS. O'DELL: He hasn't given me, you know, any names in relation to my questions. I'm just asking.
MR. PROST: I think he testified who supplied to him the core logs. Mr. Marek, he testified, gave you notes about how they discussed those core logs, so I guess I'm not clear as to the

Page 304

question.
MS. O'DELL: Object to the form? Is that the objection you're making?
MR. PROST: Pretty much.
MS. O'DELL: Okay. Well, let's stick to "object to the form."
Q. (By Ms. O'Dell) Do you have a name of a person?
A. Dave Marek.
Q. Anyone else?
A. Dave would have the information.
Q. Anyone else at Imerys?
A. Dave is the one who provided them to me. I think that Dave would -- he's got personal knowledge.
Q. Let me show you what I've marked as Exhibit Number 28.
(Exhibit 28 was marked for identification.)
MS. O'DELL: It's Imerys Bates number 499053.
Q. (By Ms. O'Dell) And Mr. Downey, is this a typewritten core log for, at least on page 1, a hole that was drilled -- excuse me -- the hole ID number H72-1?
MR. PROST: Object to form.

Page 305

A. I believe so.
Q. (By Ms. O'Dell) And according to this particular log, and it covers -- just to be fair, the holes ID'd are on page 1 of Exhibit 128 -- are M72-1, which would be that from a '72 hole, correct? 1972 hole?
A. That seems like, yes.
Q. And if you'll look down further, you see various notations made regarding drill holes with ID numbers that appear to be from 1973; do you see those?
MR. PROST: Object to form.
A. It appears to.
Q. (By Ms. O'Dell) And if you will look down at the bottom, M73-6; do you see that?
A. Yes.
Q. And then, in relation to M73-6, the geologist creating the log has noted "talc zone with 'serp'" -- I interpret that to mean serpentine -- "granules"; do you see that?
MR. PROST: Object to form.
A. Or serpentinite granules.
Q. (By Ms. O'Dell) Yes.
And if you'll turn over to the next page, this appears to log a hole drilled in 1972; do you

Page 306

see that?
A. Yes.
Q. And on the next page, is that a -- the next page -- is that a drill that was drilled in 1973?
MR. PROST: Object to form.
A. It appears so.
Q. (By Ms. O'Dell) Have you seen this document before?
A. I've seen of this type. I'm not sure if I saw this particular one.
Q. You don't have an independent recollection of reviewing this document prior to your testimony this week?
A. I don't recall, but I -- as I've said, I've seen documents of this type amongst the records that I sampled when I was reviewing.
Q. And my question, to be clear, is, you don't have an independent record -- or recollection of reviewing this document, correct?
A. No, I don't recall.
Q. Let me show you what I've marked as Exhibit 29.
(Exhibit 29 was marked for identification.)
MS. O'DELL: And it's Bates number

Page 307

IMERYS 499052.
Q. (By Ms. O'Dell) And this is a core log that was produced to us by Imerys, and it appears to relate to M73-6; do you see that?
A. Yes.
Q. Did you review this document before your deposition?
A. I don't believe so.
Q. And if you'll look in relation to this particular hole from the 32-foot mark to the 67.7-foot mark, you see the geologist has noted "serpentinite partially altered with FRX."
Do you know what that is an abbreviation for?
A. No.
Q. "Filed" -- and I think he means "filled" -- "with quartz and talc"; do you see that?
A. Yes.
Q. Is it fair to say that "FRX" is probably "fractures"?
MR. PROST: Object to form.
A. I don't know.
Q. (By Ms. O'Dell) And then from foot 83 to 87.4, you see that the geologist has noted

Page 308

"serpentinite partially altered"; did I read that correctly?
A. Yes.
Q. All right. Let me show you what I'm marking as Exhibit 30.
(Exhibit 30 was marked for identification.)
MS. O'DELL: Has Bates number IMERYS 427419.
Q. (By Ms. O'Dell) You see that this is a core drill log from M73, so -- dash 3, so that would be hole number 3 that was drilled in 1973, correct?
A. It would seem so.
Q. And that's from Argonaut.
Did you review this prior to your deposition?
A. I don't believe so.
Q. Okay. If you'll turn to page 3 of the exhibit, Bates 421 is the last three Bates numbers; do you see that?
A. I'm on that page.
Q. Okay. And this relates to M73 number 6 from Argonaut. And you see it says at foot 32 to 67.7, serpentine.
A. "Serpentinite."
Q. Yes, I'm sorry. "Serpentinite."

Page 309

And then, again, at 83 feet to 87.4 is "serpentinite partially altered"; do you see --
A. Yes.
Q. And then from 127 to 139.3, serpentinite mottled," and it says, "MAR alteration"; do you see that?
A. That's what it says.
Q. And you would -- that serpentinite can include asbestos fibers, correct?
MR. PROST: Object to form.
A. I'm sorry. I didn't hear the first part.
Q. (By Ms. O'Dell) Serpentinite --
A. Yes.
Q. -- can include asbestos fibers, true?
A. If the source material is of the right composition and the right type of metamorphosis occurs, that can be the case, but that's not the case with the mines that we're discussing.
Q. You've not reviewed the core that was being noted in the core log we're looking at, have you, sir? You have not reviewed the core that's being documented in the core log that we have marked as Exhibit 30, have you, sir?
A. No, I have not.

Page 310

Q. Let me show you what I'm marking as Exhibit 30.
MS. O'DELL: And it's Bates number --
MR. SILVER: Wait. What number did you say? It's 31.
MS. O'DELL: Oh, sorry. Excuse me. 31. Thank you.
(Exhibit 31 was marked for identification.)
Q. (By Ms. O'Dell) Have you seen this document before today?
A. (Document reviewed.) I don't recall.
Q. It's dated June the 4th, 1996?
A. Yes.
Q. And it references -- you'll see "hole" here at the top of the chart; do you see that?
A. Yes.
Q. And it also relates to the Argonaut Mine?
A. Yes.
Q. And then you'll see from, hole number 2, it says it's at pitch 3. It notes serpentinite; do you see that?
A. What are you referencing? Sorry.
Q. There's a column that's entitle "SERP."
A. Okay.

Page 311

Q. I assume that's serpentinite. Would you agree with me on that?
A. Would I.
Q. And it says that at hole number 2, there is 6 percent serpentinite; did I read that correctly?
A. I'm not exactly sure what the reference of the 6 is. I would agree that it says "6" under the column of "Serpentinite."
Q. And to the right, it says "serpentinite"; do you see that?
A. That's with it looks like, yes.
Q. And you go on down the column for serpentinite, you'll see that you've got a number of different holes that reference a certain percentage of serpentinite night ranging from 2 percent to 6 percent, correct?
A. The numbers in the column under certify pen tine range -- the numbers under the column labeled "SERP," which seems to indicate serpentinite, those numbers range from 2 to 6.
Q. I'm going to put that aside, Mr. Downey, and ask you to look at what I'm marking as Exhibit 32.
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Page 312

(Exhibit 32 was marked for identification.)
MS. O'DELL: IMERYS 469412.
Q. (By Ms. O'Dell) Have you seen this document before?
A. No.
Q. This is Argonaut Mine. And this is the first and fourth-stage final product comparison to drill samples; do you see that?
A. That's what it says.
Q. And it is analyzing hole number R-92-1, at least in the first portion that we're looking at now. And that would be from the first hole drilled in 1992, correct?
A. That seems fair.
Q. And if you'll look at depth, 10 feet to 14 feet. It had dolomite, that's abbreviated here as "DOLO," but you would agree with me that's dolomite?
A. Yes.
Q. And it shows that 33.2 percent, correct?
A. That's peak area. I don't know if that's percent or not.
Q. If it's not percent, what other metric would be used, if you know?
A. It says "area." I believe that the

Page 313

interpretation of this would be more for Julie Pier.
Q. Okay. I'll ask Miss Pier about it.
Let me show you what I'm going to mark as Exhibit 33.
(Exhibit 33 was marked for identification.)
MS. O'DELL: Bates number IMERYS 427428.
Q. (By Ms. O'Dell) Have you seen this document before?
A. I know I've seen the first two pages. And I think I've seen the last two.
Q. Okay. You'll see it identifies -- it says "Box," but it's listing the hole number there, correct?
A. Yes.
Q. And if you'll look down to hole number 98.2, you'll see at the depth of 47 to 68 feet that the geologist noted serpentinite, several ground-up zones at 53 feet approximately 2 inches of long, soft fibers, 40 degrees to core. And then he says also at 58 feet, referring to the fibers.
Have you seen that before?
A. Yes.
Q. Going further, at 87 -- excuse me, at 83 to 87 feet, geologist notes "softer radial fibers";

Page 314

did I read that correctly?
A. Yes.
Q. And it goes down from 215 to 240 feet, it says it's serpentine, 220 to 230, ground up, and then it lost about five feet. Does that mean that part of the core was lost?
MR. PROST: Object to form.
A. Is it might.
Q. (By Ms. O'Dell) Is that the little interpretation of that?
MR. PROST: Same objection.
A. It's an interpretation, yes.
Q. (By Ms. O'Dell) Do you disagree with me?
A. No, I said it's an interpretation it have.
Q. Do you agree with my interpretation?
MR. PROST: Object to form.
A. It can be an interpretation of what that means.
Q. (By Ms. O'Dell) And then from 274 feet to 296 feet, it says, "Starting to transition to talc high carbonate."
That would refer to serpentine, correct?
MR. PROST: Object to form.

Page 315

A. That's what I believe it to mean, yes.
Q. (By Ms. O'Dell) Did you review this document with Mr. Marek?
A. I don't recall. I discussed the nature of it with Mr. Crouse.
Q. Okay. But you did not review the document itself. Discussed the nature of it. Is that your --
A. I'm sorry?
Q. You did not review the document itself. You discussed the nature of it?
A. I believe we discussed the particular intervals that you pointed out.
Q. That discussed fibers?
A. Yes, ma'am.
Q. And what was your discussion with Mr. Crouse?
A. I wanted to learn about the nature of what was logged as well as, spatially, where it's located.
Q. Still in the same exhibit.
A. What page are we on?
Q. Page 432.
A. Speak up, please.
Q. 432. This refers to drill hole R98-9

Page 316

R98.
A. Okay.
Q. Are you aware, Mr. Downey, that material taken from R98-9 tested positive for tremolite?
MR. PROST: Object to form.
A. I don't know.
Q. (By Ms. O'Dell) You hadn't been told that?
A. I don't recall.
Q. Would that be something you'd remember? If somebody told you that drill cores from a core log that you reviewed had tested positive for tremolite, it's something you'd be likely to remember?
MR. PROST: Object to form.
A. I've reviewed a lot of remember. What I remember, I don't know.
Q. (By Ms. O'Dell) Okay. So see, we're on drill hole 98-9, R98-9. Let me show you what I'm marking as Exhibit 34.
(Exhibit 34 was marked for identification.)
MS. O'DELL: It's IMERYS 499264.
Q. (By Ms. O'Dell) Have you seen this document before?
A. I don't recall.

Page 317

Q. Did Mr. Crouse discuss this document with you?
A. I don't think I discussed this with him in my phone call of a week or so ago.
Q. This is a technical report. It's dated March 31st, 2003; do you see that?
A. Yes.
Q. And it is a PLM analysis of Argonaut drilling sample; do you see that?
A. Yes.
Q. And this was actually sent to Mr. Crouse, who you spoke with?
A. Yes.
Q. And "PLM" stands for polarized light microscope, correct?
A. Microscopy.
Q. Okay. The request was, "Argonaut historical or development drilling sample 1261 from drill hole R98-9," and that was the core log we were just looking at related to drill hole R98-9, correct?
A. Yes.
Q. "...had a trace amount of tremolite detected on the original XRD scan"; do you see that?

Page 318

A. Yes.
Q. "Therefore, it was submitted for PLM analysis to confirm and determine approximate quantity of tremolite"; did I read that correctly?
A. Yes.
Q. "Results." It says, "It was confirmed that tremolite was present in the sample and was roughly approximated to be 4 percent."
And that would be 4 percent of the sample, true?
A. That's what I believe, yes.
Q. Mr. Crouse did not mention to you that test result, did he, sir?
A. No.
Q. I ask you to . . .
(Exhibit 35 was marked for identification.)
Q. (By Ms. O'Dell) Let me ask you to look at Exhibit 35. It is IMERYS 426677.
Front page also relates to cores that were drilled in 1998, correct?
A. Yes.
Q. And I'll ask you to turn over -- sorry. Lost the page. Be there in just a moment. To page Bates number 683. And this map plots out the location of certain cores that were drilled at

Page 319

Argonaut, correct? R19 -- excuse me. R92-1 -- or 4, R92-5. And do you see 12-R-73? Do you see that?
A. Yes.
Q. And does that appear to be -- this is a map where certain core drill holes had been charted so you can determine where they appear, actually, in the mine itself, true?
A. It shows their location, yes.
Q. And that's one of the tools that a geologist would use in order to determine where they are in a particular deposit and in order to make decisions about how to approach the mining of that particular portion of the mine, correct?
A. Yes. It gives you spatial information.
(Exhibit 36 was marked for identification.)
Q. (By Ms. O'Dell) Let me show you what I've marked as Exhibit 36.
MS. O'DELL: It is Bates number 499366.
Q. Have you seen this document before?
A. I'm not sure if I have or not.
(Document reviewed.)
Q. This relates to hole number 2002-21; do you see that?
A. Yes.

Page 320

Q. Argonaut Mine. It was drilled July 15th, 2002, correct?
A. Yes.
Q. And at the 43.8-to-63-foot mark, the geologist notes, "schist biotite plagioclase garnet 4.5 actinolite needles"; do you see that?
A. It says 45.0 for actinolite needles.
Q. Yes.
A. I see that there.
Q. And that would be notating actinolite needles at the 45-foot mark, correct?
A. That's what it says.
Q. Prior to seeing this document this morning, Mr. Downey, were you aware that actinolite needles had been found in Argonaut in 2002?
A. No.
Q. And if you'll look below that, adjacent to, right next to, the actinolite needles, you find talc carbonate; do you see that?
A. Yes.
Q. If you'll turn over to page 5 in the document -- this was produced to us as a native file, so we've put the beginning Bates at the beginning, but it doesn't really have page numbers -- you'll see hole number, just to

Page 321

reference it, 2002, and it's hole number 2. Are we on the same page? Hole number 2.
A. Maybe I miscounted.
Q. Are we together?
A. I'm on 2002-02, yes.
Q. Okay. So this was hole number 2 that was drilled in 2002 at the Argonaut Mine, correct?
A. Yes.
Q. And at the 193-to-194-foot mark, the geologist notes "massive actinolite and steatite chill zone"; do you see that?
A. Yes.
Q. No one made you aware of that before today, correct?
A. Correct.
Q. If you'll turn -- I think it's about six pages over, but what I'm looking at is the core log that relates to 2002-11. You'll see -- and I direct your attention, Mr. Downey, to the 105.5-foot mark, the 117.7. You'll see it says, "schist chore right biotite actinolite"; did I read that correctly?
A. Yes.
Q. And actinolite is an asbestos mineral, correct?

Page 322

MR. SILVER: Object to form.
A. Actinolite is an amphibole mineral. Much more commonly it's in the nonasbestos habit. In the asbestos habit, it's actinolite asbestos.
Q. (By Ms. O'Dell) And actinolite can be asbestos. It can be non-asbestiform, correct?
A. More commonly, it's non-asbestiform.
Q. That's not my question, though. I didn't ask you if it was more common.
I'm asking you, can it be asbestos or nonasbestos? That's true?
A. It depends on the morphology of the crystal habit.
Q. So the answer to my question was yes, it can be asbestos or nonasbestos?
A. The answer is, it depends.
Q. Fair enough.
But it can be one or the other, true?
A. Depending on the morphology --
Q. Yes?
A. -- of the crystals.
Q. Correct.
And so my point being, would you agree with me that actinolite can be asbestos?
A. It depends.

Page 323

Q. That's a yes or no. It's either impossible or it's possible.
And I'm asking you, from your knowledge as a person who's been in the mining business for a long time, isn't it true your understanding is that actinolite can be fibrous, in other words, a type of asbestos?
MR. PROST: Object to form.
Q. (By Ms. O'Dell) Yes or no?
A. It depends.
Q. Yes or no?
A. No, it depends.
Q. There's no question "it depends."
You look at it under the microscope, do other things, but the question is, as a fact, can actinolite be asbestos? And the answer to that question is yes, isn't it, Mr. Downey?
A. Depending on its morphology.
Q. Right. But the answer is it can be, true?
A. It can be, depending on its morphology.
Q. So the answer to my question should be yes, actinolite can be asbestos?
MR. LOCKE: Objection; asked and answered.
Q. (By Ms. O'Dell) Yes?

Page 324

A. Depending on its morphology.
(Exhibit 37 was marked for identification.)
Q. (By Ms. O'Dell) Let me show you what I'm marking as Exhibit 37. This is Bates number IMERYS 499485.
Have you seen this document before today?
A. It doesn't look familiar.
Q. And this is a memorandum dated September 29, 2006, from David Marek to John Kinneberg; do you see that?
A. Yes.
Q. And Mr. Marek, who you spoke with, is writing about the Argonaut Mine; do you see that?
A. Yes.
Q. Turn to page 2. Under subsection 2, do you see that, "Asbestos Minerals"?
A. Yes.
Q. It says -- it's written by Mr. Marek -- "Although there has been no indication of asbestos for minerals in the talc carbonate, there have been tremolite fibers found in serpentinite bodies within the deposit"; did I read that correctly?
A. Yes.
Q. Were you aware of that before I showed you this document?

Page 325

A. Yes.
Q. That -- were you -- and then I think we've looked at this. Let me ask you the question again.
Were you aware before you came to your deposition today that tremolite had been found in Argonaut?
A. I was aware that it was found in drill hole 98.
Q. And that's what this says.
A. Dash 02.
Q. "Drill hole 98-02 indicates fibers in the core, and closer inspection of the serpentinite on the surface found some samples that were sent to Denver and confirmed."
Now, when it says "sent to Denver," that means being sent to an Imerys lab in Denver, correct?
A. Yes.
Q. And that's Miss Julie Pier's lab, correct?
A. Yes.
Q. According to Mr. Marek, he says, "This should not create a problem for the talc products as we maintain less than 2 percent cuts-off for

Page 326

serpentine in the model; however, we have not explored all serpentine exposures in the deposit"; did I read that correctly?
MR. PROST: To be fair, you probably should finish the sentence.
Q. (By Ms. O'Dell) "And if some are used for aggregate production, this may be a liability"; did I read that correctly?
A. Yes.
Q. And according to Mr. Marek, up to 2 percent serpentine has been used in talc products, correct?
A. That's what he says is in the model.
Q. Are you aware, Mr. Downey, that chrysotile has been found in material, grade 66 material, mined from the Argonaut Mine?
MR. PROST: Object to form.
A. No. My understanding is there hasn't been.
Q. (By Ms. O'Dell) And, in fact, you said yesterday, categorically, chrysotile has never been found at the Argonaut Mine, true?
A. I believe that's what I said, yes.
Q. Let me show you what I'm marking as Exhibit 38.

Page 327

(Exhibit 38 was marked for identification.)
MS. O'DELL: I'm sorry. I only got two copies of this, so if you want to look on --
THE WITNESS: There's an extra.
MS. O'DELL: Oh, thank you.
THE WITNESS: You handed two extra.
MS. O'DELL: This is Bates number IMERYS 498998.
Q. (By Ms. O'Dell) Have you seen this document before?
A. I believe so.
Q. When did you see it?
A. I don't recall when.
Q. If you'll turn to the fourth page.
A. Is there a label? What's it look like?
Q. It says "4 of 6" at the bottom.
A. "4 of 6," okay.
Q. Do you see that, "4 of 6"? Are we together on that page?
A. "4 of 6"?
Q. Yeah. "4 of 6" on the right-hand side. You're there?
A. You're saying "4 of" or "40"?
Q. "4 of 6." I'm reading on the lower right-hand --

Page 328

A. I think it's your southern accent that was --
Q. Yeah, I know. It's a curse, but I'm stuck with it at this point.
Okay. So if you'll look at the lower portion of the page, see, it says, "Float feed September 2002"; do you see that?
A. Yes.
Q. September 2002, talc for Johnson's Baby Powder and Shower to Shower was still being sourced from Argonaut, correct?
A. Yes.
Q. And "float feed" refers to West Windsor and the talc being processed through the float feed at West Windsor, correct?
A. Yes.
Q. And this sample number A02595-1 -- do you see that?
A. Yes.
Q. -- has been examined for both amphibole and chrysotile; do you see that at the top?
A. Yes.
Q. And according to this report, chrysotile fiber was identified in this sample, correct?
MR. PROST: Object to outside the scope.

Page 329

MR. SILVER: Wait. We got to be a little more specific than that. It's outside the scope because this is an area for Miss Pier.
MS. O'DELL: And we're going to ask Miss Pier about it, but Mr. Downey has testified categorically yesterday, twice, that chrysotile has never been found at Argonaut. He said that in general, and then he said that in relation to --
MR. PROST: That's fine.
MS. O'DELL: -- Johnson & Johnson's talcum-powder products, and I have a right to confront him with a company document that is inconsistent with his testimony.
MR. PROST: That's fine. You can ask him. He can say it again. But Julie Pier is going to speak for the company on that topic, so -- but go ahead.
MS. O'DELL: I'm not disputing that. I know she's going to be talking about testing.
Q. (By Ms. O'Dell) Do you see this, Mr. Downey?
A. Yes.
Q. Okay. And this is a TEM asbestos analysis of Argonaut products, correct?
A. Yes.

Page 330

Q. And to be clear, chrysotile fiber or structure was found in a sample of, essentially, Johnson & Johnson's talc?
MR. PROST: Object to form.
A. No.
Q. (By Ms. O'Dell) Okay. Why is that not correct?
A. Well, the sampling that you are referencing is flotation feed. That's not finished product. And the column header is "Number of Structures." And in this particular one, it's structures less than 5 micron. I'd defer to Julie Pier to interpret the document further, but it's my understanding that that is not a finding of chrysotile.
Q. It says, "Chrysotile." It talks about structures, and it says, "less than or equal to 5 microns," correct, at the top?
A. That's the column header, yes.
Q. And it refers to structures. And it says one structure of chrysotile was found in this particular sample, true?
A. The --
Q. True?
A. The -- asbestos concentration in the

Page 331

next column is BDO, which means below detection limit.
Q. That's not what my question was.
My question was, one structure of chrysotile was found in this sample; is that true?
MR. PROST: Object to form.
Q. (By Ms. O'Dell) Is that true, sir?
A. One structure less than 5 microns was found, but it was below the detection limit.
Q. So the answer to my question is yes, one structure of chrysotile was found in this sample.
MR. PROST: Object to form.
Q. (By Ms. O'Dell) Correct?
A. The interpretation of the answer to that I'd defer to Julie Pier.
Q. And at September 2002, we've established that that talc would have been mined from Argonaut and sent to West Windsor for purposes of sourcing Johnson & Johnson with talc, correct?
A. Yes.
Q. And just to be clear, this is -- the structure we were referring to is equal to or greater than -- excuse me -- equal to or less than 5 microns, correct?
A. The way I read the sample, was less than

Page 332

or equal to 5 microns.
Q. Turn to the next page, please. It's the same "TEM Asbestos Analysis of Argonaut Product Composites." If you'll go down to a sample, it's "float feed." It's about six lines down. Float feed taken June 2002, correct? Correct?
A. I see one there.
Q. That's what it says?
A. That's what it says.
Q. And that's the time period during which talc from Argonaut was being used in Johnson & Johnson's talcum-powder products, correct?
A. Yes.
Q. And this is float feed, which means it was sent to West Windsor, correct?
A. Correct.
Q. And one structure equal to or less than 5 microns was identified in that sample, correct?
MR. PROST: Objection.
A. Less than or equal to 5 microns, but it was below the detection limit.
Q. (By Ms. O'Dell) Okay. Let me ask you to put that the aside for a moment.
MR. SILVER: Leigh, were you giving this to

Page 333

me?
MS. O'DELL: I had an extra copy.
MR. SILVER: Oh, okay.
Q. (By Ms. O'Dell) My colleague reminded me I forgot something about that document, so let me ask you to turn back to it.
A. Which one?
Q. The one we were just looking at, which I've marked as Exhibit 38. It's the one right in front of you.
A. Okay.
Q. And if you'll go to the back and count three pages in from the back, see that?
A. Yes.
Q. And this is a summary of the test results that we were just looking at a few minutes ago, the table we were just looking at a few minutes ago, correct?
A. I don't know. There's no other description other than the column headers and the dates and a bunch of ones and zeros.
Q. Let me just ask you this, then, because we won't take the time to tie it back, but I'll represent to you I believe it to be a summary of the results.

Page 334

Grade 66 is Johnson & Johnson-grade talc, correct?
MR. PROST: Object to form.
A. That's the grade that we manufactured at West Windsor for J&J.
Q. (By Ms. O'Dell) And grade 96 was also a grade of talc that was manufactured for Johnson & Johnson, correct?
A. For export purposes, yes.
Q. It was used in Canada, is my understanding; is that right?
A. That's my understanding as well.
Q. Okay. Thank you, sir.
Let me show you what I'm marking as Exhibit 39.
(Exhibit 39 was marked for identification.)
MS. O'DELL: It's Bates number IMERYS 469483.
Q. (By Ms. O'Dell) If you'll look at this, on page 2 of the document, which is the Bates number ending 484, you'll see this relates -- this log, core drill log, relates to hole number 2001-1; do you see that?
A. Yes.
Q. You'll see at the bottom of the chart,

Page 335

Mr. Downey, at 137 feet to 147 feet, it says, "Amphibole oxide covered," I'm not sure what that's abbreviated for, "CA 15"; do you see that?
A. I see that. I don't know what it means.
Q. Is -- and "amphobilite" is a misspelling of anthophyllite; do you agree?
A. No.
MR. PROST: Object to form.
Q. (By Ms. O'Dell) You don't agree with that?
A. No.
Q. What is "amphobilite"?
A. I think it's a misspelling of "amphibolite."
Q. What's amphibolite?
A. Amphibolite is a general term of rock composed of amphibole minerals.
(Exhibit 40 was marked for identification.)
Q. (By Ms. O'Dell) Let me ask you to look at Exhibit 40.
Have you seen this document before today?
A. Yes, but it's been some time since I've seen it.
Q. Did you review it in preparation for your deposition?

Page 336

A. I don't recall.
Q. If you'll turn over to page 2 of the exhibit, and if you'll just identify the document as you're turning to that page. This is a Luzenac North America standard operation procedure, and the title of which is "Control of Non-Conforming Product"; do you see that?
A. Yes.
Q. And so you'd agree with me that this is an Imerys standard operating procedure?
A. Yes.
Q. And it defines "nonconforming products"; do you see that?
A. I see the header, yes.
Q. And it says, "Nonconforming products include conditions where," and the first bullet is, "Product characteristics are out of specification"; do you see that?
A. Yes.
Q. If asbestos is found in talc, that would be out of specification, true?
A. If a detectible amount, meaning above the detection limit, that would mean that it's out of specification.
Q. If talc provided to Johnson & Johnson

Page 337

contains asbestos, it would be out of specification?
A. Yes.
Q. And if a product is out of specification, then Imerys would have the duty, under this standard operating procedure, to notify the customer, or, in this case, Johnson & Johnson, correct?
MR. PROST: Object to form.
A. It's been a while since I've read that. If you're saying that that's what it says in here, maybe we can read it.
Q. (By Ms. O'Dell) Okay. If you'll turn to Bates number ending 246, do you see that? It says "Responsibilities"?
A. Yes.
Q. And it says, "Quality Management Representative Authority and Accountability," and bullet number two, it says, "Notify the customer if nonconforming product has already shipped to them in order to prevent or stop use"?
A. Yes.
Q. We just reviewed, previously, a report, and I think you still have it before you, Mr. Downey?

Page 338

A. What's your exhibit number?
Q. If you'll go back to the exhibit so I can identify it for you.
Well, I'm going to ask you in two ways. You recall me showing you a technical report where tremolite was found in talc mined from Argonaut.
Do you recall that just a few minutes ago?
MR. PROST: Object to form.
A. Let's see the document.
Q. (By Ms. O'Dell) You don't remember that? Yeah. Well, I failed to put the exhibit number on my copy, so if you'll just keep sifting backwards, I'll tell you it's just a few exhibits earlier. Okay. Keep going. There you go. It's Exhibit -- what's the Exhibit Number, please?
A. 34.
Q. 34.
When Imerys -- when their own lab tested talc from Argonaut and identified and confirmed tremolite roughly approximated to be 4 percent of that particular sample, did Imerys contact J&J and say, "Hey, we found tremolite in our talc. This may be a problem"?
MR. PROST: Object to form. That misstates what it says.

Page 339

A. This is from a sample from drilling. It's not finished-product sample.
Q. (By Ms. O'Dell) Imerys did not, to your knowledge, contact J&J and say, "We have found tremolite from a sample of the Argonaut Mine," correct?
MR. PROST: Object to form.
A. This is from a drilling sample. It's not finished product. This is not from grade 66.
Q. (By Ms. O'Dell) So it's your understanding they did not contact Johnson & Johnson, and you don't think they should have?
A. I don't know if they did or didn't, but it wouldn't have been required.
Q. When the chrysotile fibers that we just discussed in Exhibit 38 a few minutes ago were identified by Imerys' lab -- they did a TEM asbestos analysis.
When they identified chrysotile structures, did they inform J&J of the results of those tests?
MR. PROST: Object to form. This is Julie Pier's scope of testimony.
A. I believe Julie would have the answer.
MS. O'DELL: Well, what I've just asked

Page 340

Mr. Downey about is a quality-assurance standard operating procedure that is within his scope.
Q. (By Ms. O'Dell) So I'm asking, did Imerys follow its own quality-control standard operating procedure and contact Johnson & Johnson when there were positive identification of chrysotile in grade 66 talc?
MR. PROST: It may be possible that this policy falls within his category; however, the results of testing, I believe, fall within Julie Pier's category, so she will speak for the company and answer that question.
MS. O'DELL: No, no, no, that's not -- I'm not asking him to comment on the veracity of the test or accuracy. I'm not asking about that. I'm asking, did they comply -- and this is within his area that he's been put up.
Q. (By Ms. O'Dell) Did Johnson & Johnson comply with the nonconforming product standard operating procedure and -- excuse me. Let me strike that. Start again.
Did Imerys comply with its own non-conforming product standard operating procedure and notify Johnson & Johnson when chrysotile structures were identified in grade 66 talc?

Page 341

MR. PROST: Object to form.
Q. (By Ms. O'Dell) True or false?
MR. LOCKE: Objection; asked and answered.
Q. (By Ms. O'Dell) Yes or no?
A. Chrysotile was not detected in the sample.
Q. I didn't -- I said "chrysotile structures." And they -- and we have been through this. Chrysotile structures were identified in the sample.
When this occurred, did Imerys, in compliance with its own standard operating procedure, inform Johnson & Johnson?
MR. PROST: Object to form.
A. I believe Julie Pier would know.
Q. (By Ms. O'Dell) This is within your area, sir.
And the answer is -- there were three possible answers: "Yes, Imerys informed J&J," "No, Imerys did not inform J&J," or, "I don't know." So --
MR. PROST: That's a different question. That is a different question.
MS. O'DELL: No, it's not.
Q. (By Ms. O'Dell) So what's the answer to

Page 342

the question, sir?
MR. PROST: Can we clarify what the question is at this point?
Q. (By Ms. O'Dell) Did Imerys comply with its control of nonconforming product standard operating procedure and inform Johnson & Johnson when chrysotile structures were identified in grade 66 talc?
MR. PROST: Object to form.
MR. LOCKE: Objection.
Q. (By Ms. O'Dell) And the answer -- yes -- you may explain your answer, but it's "yes," "no," "I don't know."
MR. PROST: That's not true because it was a compound question. He can't answer it --
MS. O'DELL: It was not a compound question. Object to form.
Q. (By Ms. O'Dell) And you may answer the question.
MR. PROST: It was a compound question. Whether or not someone informs someone of something is different than whether or not you're complying with a policy which depends on the results as interpreted by Julie Pier. The question's completely misleading.

Page 343

MS. O'DELL: No, it's not. It's absolutely not misleading. But I'll break it apart. I'm happy to.
MR. PROST: Please. Thank you.
Q. (By Ms. O'Dell) Did Imerys inform Johnson & Johnson that it found chrysotile structures in grade 66 talc?
MR. PROST: Object to form.
A. I believe Julie Pier would know that. I don't know.
Q. (By Ms. O'Dell) And if Imerys failed to inform Johnson & Johnson of these test results where chrysotile fibers were identified, that would be in violation of Imerys' internal policy regarding nonconforming products, correct?
MR. PROST: Object to form.
A. No.
Q. (By Ms. O'Dell) Let me ask you to put that aside, Mr. Downey. I'm going to transition to a new topic. We've spent a long time on Argonaut. Now let's move to China, shall we? The topic, not the country, okay?
We talked a bit about China yesterday. And we made our best efforts to pronounce the names of the mines and the names of the companies, and we

Page 344

were trying to get straight where talc that was used to source Johnson's Baby Powder products was mined. And I believe you testified it was the Jizhua Mine where talc sold by Imerys for J&J products was mined; is that fair?

A. I'd defer to the note that I took for the name of the mine.

Q. Okay. All right. Why don't we -- I think it was --

A. I'm sure it's at the bottom of the stack.

Q. Exhibit 6. What's the name of the mine?

A. Can I just spell it for you instead of pronouncing it?

Q. That'd be fine.

A. Thank you. J-i-z-h-u-a.

Q. Jizhua?

A. Hmm?

Q. Jizhua. Is that a fair pronunciation?

A. To me, that looks like a J, not a Z, so I don't know how you're getting "Zhizhua" out of it.

(Exhibit 41 was marked for identification.)

Q. (By Ms. O'Dell) Okay. This may help. I'm going to show this to you. I'll hand it to

Page 345

you. Actually, it was a part of a document, and it had a list of the producers, the sellers and other sort of main players, and that seemed to be a good idea to bring to the deposition, just because they're difficult names. So I want to walk through it real quickly to make sure we have the players defined. So I'm going to make it a little bit bigger. It's a one-page document. Talks about producers.

And I understand the mining company, based on your testimony yesterday, was the Guilin Guiguang Talc Development Company; is that correct?

A. I think you even pronounced it correctly.

MR. PROST: Leigh, what's the Bates number on this?

MS. O'DELL: It is IMERYS 061692.

Q. (By Ms. O'Dell) And that's the company that Imerys purchased the talc from, correct?

A. Yes.

Q. And it goes on to say, the middle, "Luzenac," now Imerys, "is currently purchasing 25,000 tons of Guangxi number 1 crude from seller," which would be Guilin Guiguang Talc Development Company, right?

Page 346

A. Can you expand that a little bit more? That's a ways away for me.

Q. Is that better?

A. Yes.

Q. Okay. So my specific question is, was Guangxi number 1 crude the talc ore that was sold to Johnson & Johnson for purposes of manufacturing their Baby Powder or talcum-powder products?

A. It's my understanding that Guangxi number 2 is the ore that we used for that.

Q. All right. So just to recap, Guilin is the mining company for sure?

A. Guilin Guiguang, yes.

Q. And the mine is Jizhua. Right there. That's the spelling. It's on this document.

A. I don't think you're projecting --

Q. Sorry. The Jizhua quarry.

MR. SILVER: While the witness is reviewing, I'm just going to let all counsel know lunch is here. I know we got delayed by the fire drill, so I will, hey, defer to the witness on whether he needs to break, and then when you guys are ready.

Q. (By Ms. O'Dell) Mr. Downey, do you need a break?

A. Pardon?

Page 347

Q. Would you like to break for lunch?

A. Sure. If it's ready.

MR. SILVER: Yeah.

THE WITNESS: I wasn't listening. I was trying to --

MR. SILVER: It's ready, but we're going to go on your schedule. If you want to keep going, we keep going. If you want to do lunch, we can do lunch.

THE WITNESS: Well, we've been going now for about an hour and a half or so, so . . .

VIDEOGRAPHER: We're going off the record at 12:30.

(Recess taken.)

VIDEOGRAPHER: We are back on the record at 1:17.

Q. (By Ms. O'Dell) Mr. Downey, we were talking about the mine from which talc was sourced for purposes of Johnson & Johnson products. And we ended before lunch identifying that mine as the Zhizhua quarry. And it's Z-h-i-z-h-u. "Zhizhua" is my pronunciation, for lack of -- that's my best effort. I'll put it that way.

And just to make sure the record's clear, is it your testimony that that is the only mine in

Page 348

China that sourced talc for Johnson & Johnson Baby Powder products?
A. The information that I obtained from Mr. Bergstrom, whom we discussed yesterday, told me that Guangxi number 2 was sourced from a single mine in the Longsheng District. And he spelled it J-i-z-h-u-a.
Q. Okay. And to your knowledge, was any talc for Johnson's talcum-powder products supplied from the Guping quarry? G-u-p-i-n-g.
A. Not that I'm aware of.
Q. Was there any talc for purposes of John's talcum-powder products supplied from the Shanglang quarry -- S-h-a-n-g-l-a-n-g -- quarry, to your knowledge?
A. Not to my knowledge.
Q. Lastly, was any talc for Johnson's talcum-powder products supplied from Tongzi quarry? T-o-n-g-z-i.
A. Not that I'm aware of.
Q. You testified yesterday that the Zhizhua mine was operated by the Guilin mining company, correct?
A. Guilin Guiguang? That's my understanding, yes.

Page 349

Q. What due diligence did Imerys undertake to understand the geology of the deposit located at the Zhizhua mine?
MR. PROST: Object to form.
A. It's my understanding that various Luzenac entities had a strong presence there since the late 1980s, and they had been using the Guangxi number 2 ore for decades before we began using it in Houston to supply grade 25 for Johnson & Johnson.
Q. (By Ms. O'Dell) Other than the fact that -- well, let me stop and state, which other Luzenac, now Imerys, entities had been purchasing grade -- excuse me, had been purchasing talc from the Zhizhua mine?
A. It's my understanding the Luzenac talc company in France.
Q. And that is now Imerys Europe -- Talc Europe, correct?
MR. PROST: Object to form.
A. I believe so, but I don't know the corporate histories or the names of the companies in Europe.
Q. (By Ms. O'Dell) Hans Bergstrom, who you spoke with about the Chinese operation.

Page 350

A. Jyrki?
Q. You talked to Mr. Bergstrom, Hans Bergstrom?
A. Jyrki.
MR. SILVER: You are getting two different -- you got the first name of one and the second name of another.
Q. (By Ms. O'Dell) Okay. Mr. Bergstrom --
A. We can settle on that.
Q. Yeah. What's his first name?
A. Jyrki.
Q. Oh, Jyrki. Okay.
Mr. Bergstrom, who you spoke with about the Chinese operation, is an employee of Imerys Talc Europe, correct?
A. Yes. A French company.
Q. And is that the -- and Mr. Bergstrom provided you with information about the Chinese mining operation, correct?
A. Yes, he did.
Q. And did you speak with anyone else or review any other documents to educate yourself about the mining operations in China?
A. I mentioned yesterday that I also spoke to David Crouse, a former employee, and Julie Pier.

Page 351

Q. About the mining operations in China?
A. I asked them what they knew of the mining operations in China, yes.
Q. And at the time that Imerys Talc America began to sell Guangxi crude to Johnson & Johnson, the due diligence that was undertaken was really to rely on what had been done by other Luzenac entities, including Luzenac Europe, correct?
MR. PROST: Object to form.
A. I'm not sure what you're asking.
Q. (By Ms. O'Dell) Was any independent review conducted by Imerys Talc America regarding the talc ore deposit in China?
A. As I recall, David Crouse said that he visited the Chinese talc mine that we're talking about.
Q. At what point did this visit take place?
A. I don't recall what time frame.
Q. Was it before or after Imerys began to sell talc from the Zhizhua mine to J&J for its products?
A. I don't recall.
Q. Did Imerys Talc America have access to mine analyses prior to selling talc from China to Johnson & Johnson for its talcum-powder products?

Page 352

MR. PROST: Object to form.
A. I don't know if I've seen analyses in that time frame. I don't know.
Q. (By Ms. O'Dell) Were maps of the mine itself made available to Imerys Talc America prior to selling talc to Johnson & Johnson from China in 2003?
A. I don't know.
Q. Were core logs made available Imerys Talc America prior to selling Chinese talc to Johnson & Johnson?
A. I don't know.
Q. Were access to mining plans for the Zhizhua mine provided to Imerys Talc America prior to Imerys selling Chinese talc to Johnson & Johnson?
A. I don't know.
Q. Who would know?
A. That was many years ago. I don't know if there is anyone present who would know.
Q. Who among the current employees of Imerys would have the most knowledge regarding the geology of the Zhizhua mine?
A. In terms of an Imerys Talc America employee?

Page 353

Q. I'll ask you first, Imerys Talc America.
A. Who would have the most knowledge of the geology of the deposit? I don't know.
Q. Would it be David Crouse?
A. He's not a current employee.
Q. He's a former employee?
A. He's a former employee.
Q. Of current or former employees of Imerys Talc America, would David Crouse be the person that would have the most knowledge about the Chinese deposit?
MR. PROST: Object to form.
A. I would say more than likely, yes.
Q. (By Ms. O'Dell) And of the employees from other Imerys entities, is it your understanding that Jyrki Bergstrom would have the most knowledge of the geology of the Zhizhua mine in China?
A. He's the one doing it now, so he would have the knowledge.
Q. And he's been doing that just since 2016, correct?
A. That's my understanding, yes.
Q. And Imerys Talc America had been supplying talc from the Zhizhua mine to

Page 354

Johnson & Johnson for 13 years prior to Mr. Bergstrom assuming that responsibility?
A. Yes.
Q. Are you aware of any other individuals besides Mr. Bergstrom that would have information regarding the Zhizhua mine? And when I say "information," I mean the geological information.
A. Not of any current employees, I don't know.
Q. How about former employee?
A. Yes.
Q. Who?
A. Jean-Francois Robert.
Q. In documents I've seen a "J.F. Robert." Would that be Jean-Francois Robert?
A. It could be. I don't know what document you're talking about, but it could be.
Q. But if I say -- if I see a document that says "J.F. Robert," it's more likely Jean-Francis [sic] Robert?
A. Francois?
Q. Excuse me. Francois. Robert.
A. Again, depending on the document, it could be him.
Q. And it's your understanding that in

Page 355

2003, at the time that Imerys began to sell talc to J&J from China, that Imerys' entities -- not Imerys Talc America, but Imerys talc entities from other parts of the world had been buying talc from the Zhizhua mine and had many years of experience and knowledge about the geology itself, correct?
A. Yes.
Q. Let me show you what I've marked as -- or am marking as Exhibit 42.
(Exhibit 42 was marked for identification.)
MS. O'DELL: This is IMERYS 403794.
Q. (By Ms. O'Dell) You see on the front page it appears to be a photocopy of a file. And it says, "Chinese ore D. Crouse," David Crouse, correct?
A. Yes.
Q. Have you seen this document before?
A. (Document reviewed.) I think I've seen sections of it.
Q. Let me ask you to turn to Bates ending 810. Are you there, sir?
A. 403810?
Q. Yes. This is a section of this document called "Specifications for Guangxi 27 crude ore."
And that was the ore that was supplied or is

Page 356

being supplied to Johnson & Johnson, correct?
A. Yes. I'm trying to find where that particular section begins just to get a date reference so I know what time period we're talking about. Do you know?
Q. It's my belief it is 1997.
A. Is that is referencing 403085?
Q. That's right.
And you see, this -- I'll just go to that so you'll be oriented. It's November 1997 to Jack Buettner from David Crouse, and he's talking about the Guangxi quality control products. Goes down, third paragraph, and then I have my colleague -- she's going to ask you some questions about sampling, so I'm not going to cover that.
It says, third paragraph, "There is some difficulty in determining the accurate mineral of the Guangxi crude due to the variable nature of chlorite and our lack of experience with the type found in the Guangxi deposit"; did I read that correctly?
A. Yes.
Q. He says, "We are currently in the process of better defining the specific properties and characteristics of this chlorite, which will

Page 357

allow us to," "...calculate the total mineralogy," okay?
MR. PROST: "Us to better calculate," just to be clear.
Q. (By Ms. O'Dell) "...allow us to better calculate the total mineralogy," did I read that correctly?
A. That portion, yes.
Q. And then if you will turn over to 810, you'll see specifications from -- or for, rather, Guangxi number 2 crude ore.
(As read:) Comments: Very little chemical or mineralogical analytical data is on hand for the Guangxi number 2 crude or products produced from the crude; did I read that correctly?
A. That's what it says.
Q. "It is understood that grade 12 is derived from the sorting process to acquire number 1 grade, so if the number 1 grade is mineral, the number 2 grade will probably be below target specifications"; did I read that correctly?
A. Yes.
Q. And it was grade 2 crude ore that was sent to Johnson & Johnson, true?
A. But this is 1997. It predates when we

Page 358

began supply.
Q. Let me ask you to turn to page 403820; do you see that? So August 11th, 1997, memorandum from David Crouse regarding the characterization of Guangxi number 1 crude.
Now, in the Chinese mines, I've seen references to sorting of the talc after it's extracted, hand-sorted.
What's your understanding of that process?
A. That talc lumps are hand-sorted.
Q. By manual laborers?
A. By manual labor.
Q. And what is the criteria that they use to sort the talc?
A. It's my recollection that they are sorting the talc lumps for mineralogy and, for example, to reject chlorite, as an example.
Q. And what's the visual presentation of chlorite?
A. In the Guangxi? From my recollection, it's a greener color, and the talc is very white and bright compared to the chlorite.
Q. And when you -- you say that the sorting is done based on mineralogy.
Are these geologists, you know, in the

Page 359

mines, sorting these rocks?
A. Say again.
Q. Are these -- I mean, you said these rocks are sorted based on mineralogy.
A. Yes.
Q. And are these workers trained in mineralogy so they would be able to recognize certain types of rock versus others and then be able to, you know, sort it accordingly?
A. They would be laborers that would be trained specifically to be able to identify the talc versus the chlorite.
Q. And would they primarily do that based on color?
A. Not just color.
Q. What else?
A. But color and the mineral habit that would be exhibited between -- to contrast between the two minerals.
Q. What are you -- when you use the term "mineral habit," what are you referring to?
A. Generally, the way that the crystals grow. There are other mineralogic criteria such as luster, just physical parameters by which you can distinguish between minerals, especially if, you

Page 360

know, you're dealing with very local and very specific rocks instead of -- you don't have to train them to go out and be a mineralogist. You can just train them specifically to be able to distinguish between the two.

Q. And these individuals that would be the doing the sorting are -- and I don't mean this in a derogatory way, but they are uneducated, most likely, workers that live near the Zhizhua mine?

MR. PROST: Object to form.

Q. (By Ms. O'Dell) They're manual laborers that live near the mine, in most instances?

A. I don't know where they live, but, yes, they would be manual laborers that can be trained to do this work.

Q. Okay. And I saw a reference to on-site apartments or a dorm for these workers. That's why I said that they live near, but it doesn't matter.

Okay. Let's keep going. This is a memo from Mr. Crouse, who's talking about the Guangxi crude talc. And he's referencing "several episodes of quality control problems." And he's asked to "help identify the ore problem and recommend improvements to the methods by which the Chinese sort and select" the "crude ore"; do you see that?

Page 361

A. I was trying to read the -- find where you're reading from, so . . .

Q. He said, "I," and that's David Crouse, was asked to identify the ore problem and recommend improvements by which the Chinese sort and select crude ore.

A. "Our crude ore."

Q. Yeah. "The initial confirmed that there was significant green and brown probably chlorite mineral contamination in more than 30 to 50 percent of the crude on hand in Houston and Grand Island. In association with the ore concerns, J.F. Robert was asked to coordinate reduced (10)," I believe that means inches; is that correct?

MR. PROST: Object to form. Outside the scope.

MR. SILVER: Actually, I'm going to allow the witness to keep answering, but as to this document, we're going to have a standing objection to this entire document because the scope of this deposition has to do with ore that goes to J&J products, and this says it's about Guangxi 1. But I'll let you keep asking, Leigh, but we'll have a standing objection to the document.

MS. O'DELL: Okay. And is it your position

Page 362

that --

Q. (By Ms. O'Dell) Well, let me ask you.

Mr. Downey, does Guangxi 1 crude originate from the Zhizhua mine?

A. I don't recall asking Mr. Bergstrom about Guangxi number 1.

Q. Let me see if I can add a little bit more to this.

"In association with the ore concerns," do you see that? "In association with the ore concerns"?

A. Yes.

Q. "J.F. Robert," Jean-Francois Robert, right? J.F.?

A. Yes.

Q. "...was asked to coordinate reduced 10-inch sizing and sorting methods with the Guilin Guiguang Company. Unfortunately, he did not negotiate these methods on-site and arrived at the mine after the ore had been mined and sorted. It met neither the size nor the sorting requirements that had been requested"; did I read that correctly?

A. Yes.

Q. And he goes on to say, "The

Page 363

shipments" -- at the bottom of the paragraph, "The shipments of number 1 and number 2 crude are expected to ship in July and arrive in Houston in September."

So this also relates to --

A. Well, you skipped over a section.

Q. That's fine. But the last paragraph -- excuse me, the last sentence of the paragraph refers not only to crude number 1 but also crude number 2 ore, correct?

MR. PROST: Object to form.

A. Well, first, you skipped over a section.

Q. (By Ms. O'Dell) That's not my question, sir. I'm asking you about the last -- the last sentence.

The last sentence of that paragraph refers not only to number 1 crude, but also refers to number 2 crude?

MR. PROST: Objection.

A. It says, "The timing of the shipments."

Q. (By Ms. O'Dell) It refers to number 2 crude, correct?

MR. PROST: Objection.

A. In terms of its shipment time.

Q. (By Ms. O'Dell) If you'll turn over to

Page 364

the next page it says, "Specifications: Although there has been the perception" -- and this is David Crouse writing.

"Although there has been the perception that we," meaning Imerys, (as read:) have mineralogical and analytical specifications for crude number 1 -- excuse me -- for Guangxi crude number 1, the actual situation appears to be the opposite; did I read that correctly?

MR. PROST: It's actually "Guangxi number 1 crude," to read it precisely, but go ahead.

Q. (By Ms. O'Dell) Did I read that correctly?

A. Other than the corrections by counsel, I think so.

Q. Mr. Downey, is it your understanding that an Imerys employee was present at the mine when talc for Johnson & Johnson was being mined?

MR. PROST: Object to form.

A. On occasion, I believe so.

Q. (By Ms. O'Dell) When you mean "on occasion," you're talking about the yearly visits or biannual visits?

A. However frequently they were done by Mr. Bergstrom or Robert, yes.

Page 365

Q. And so there's a difference -- I'm asking you a different question than just were there different occasions where an Imerys employee might visit a mine, or visit the Zhizhua Mine.

I'm asking, during the time periods when talc that was going to be supplied to Johnson & Johnson was being mined, was an Imerys employee overseeing the mining process?

A. You mean for the entirety of the mining campaign?

Q. Yes. Yes.

A. I don't know about the entirety of the mining campaign.

Q. That's not your understanding, that an Imerys employee was there for the entire mining campaign, correct?

A. I don't know. I don't have that information.

Q. Well, according to Mr. Bergstrom, he visits at least twice a year, correct?

A. Yes.

Q. Let me back up just a moment, Mr. Downey.

Walk the jury through the mining process at the Zhizhua mine in terms of extraction to the

Page 366

processing that took place, to whatever degree it was processed in China, and then I want to take -- have you take us through the process from China to Houston. And so why don't you walk us through your understanding.

A. Okay. Can I refer to my notes?

Q. Yeah, sure.

A. Okay. So Guangxi number 2 is campaign-mined. And by that I mean the -- generally speaking, a mine campaign is when you're going out to do something in a dedicated fashion, that you're going out with the specific intent to go out to produce Guangxi number 2 for a certain time period, or for a certain volume of production.

The Guangxi 2 is located in a limited area of the mine, and they use selective mining, which is visual sorting in the pit as it's -- as the rock is being mined.

Then it goes to a screening and sorting plant -- or first of all, it's screened to different size fractions. The lumps are -- the lumps are then hand sorted, and the hand-sorted lumps become Guangxi number 2 for export. The fines are used in other grades, not Guangxi number 2.

Page 367

It's sampled after the screening-and-sorting stage. A large composite sample is taken at the production line. It's also stored after it's been screened and sorted. It's stored on a concrete storage area.

So the mining occurs, I think, two or three hours away by truck of where the sorting and screening is done. My understanding is that's where Guilin Guiguang have a manufacturing plant where they produce their own talc powder products at that facility, but that's also the stage where the screening and sorting is done.

So then once the Guangxi number 2 has been sampled and stockpiled on a concrete storage area, then, when the shipment is arranged -- when the shipment's been arranged, then the material is transferred to the port. And at the port facility, they also have protocols to make sure that all of the equipment and trucks that are used to handle the talc, that they are all clean. So all of the -- all the trucks and loading equipment are washed before using for talc.

There's also a traffic-management system at the port to disallow vehicles to go into the area where the talc is being stockpiled other than the

Page 368

equipment that's already been cleaned.
Any spillage at the port is collected on tarps, and it's rejected due to potential contamination of anything that might be at the port.
They have dedicated stockyards at the port for Guangxi number 2. And when it's at the port in these dedicated stockyards, it's covered by tarpaulins when it's stored there.
There are also instructions regarding no storage of potential contaminants nearby. For example, other minerals, you know, whether it's coal or something else that might be moving through the port and being temporarily stored there, or other things that could potentially contaminate, there are instructions regarding all that.
So all the logistics of what the port is doing need to be worked out in advance so that all of this can be accommodated according to their procedures.
Q. Okay. Is that -- you've taken us -- you've walked us from the mine to the port?
A. Right. I'm not quite done at the port.
Q. Okay. What else?
A. During the loading procedure when

Page 369

they're loading the ship, if, at a nearby berth, another ship is loading something else, or even on the same ship, they're loading something into a different hold that is potentially a contaminant, they stop loading. So there are protocols to guard against contamination during transport.
Q. The talc -- do you need to take a break?
MR. PROST: He lost his coaster.
THE WITNESS: The coaster was stuck to the bottom of the cup.
Q. (By Ms. O'Dell) The talc crude, just make sure I'm clear, when it's transported, you know, to the port by truck, it's in loose form. It's not put in bags or anything like that.
It's loose, and then it's dumped onto the concrete holding area at the port, and then at some point, it is then put in the hold on the ship; is that fair?
A. The lumps are loose, but they're in a covered truck.
Q. Covered truck. But they're not bagged or anything. They remain loose within the truck. They're dumped. They continue to remain loose. And then they are, at some point, moved by tractor.
Those lumps or the talc is then moved into

Page 370

the hull of the ship, correct?
A. Well --
Q. Or berth of the ship?
A. Well, during transport, they are stored in the truck as lumps.
Q. Okay. That answers my question.
A. And covered.
Q. I've seen some references to bags, and I just wanted to make sure they were not bagged -- the talc was not bagged at that point.
A. That's -- yeah. I don't believe so.
Q. All right. Let me ask you, before you turn away from Exhibit 42, I think it's one we were just looking at, Exhibit 42, I'm going to ask you to turn to page 823. 823. And if you'll recall, this is a memorandum that was written by Mr. Crouse.
A. The 1997?
Q. Yes. And he makes some recommendations.
He says, lower portion of the paragraph, "A Luzenac representative should be available at the mine during the mining and sorting process in order to confirm that the order is being handled per negotiated contract parameters"; did I read that correctly?

Page 371

MR. SILVER: Same objection as to scope. The witness can answer.
A. That's what it says.
Q. (By Ms. O'Dell) And it's your understanding that Luzenac, or Imerys representative, is not present at the Zhizhua Mine when crude 2 talc is mined for sale to Johnson & Johnson, correct?
MR. PROST: Object to form.
Q. (By Ms. O'Dell) That a -- let me see if I can address the objection.
As I understood your description of the process, an Imerys employee is not physically present to supervise the mining and sorting process in relation to Guangxi 2 crude?
MR. PROST: Objection.
A. It's my understanding that that's done on an audit basis, not on a continual basis. They're not there during the entire mining campaign.
Q. (By Ms. O'Dell) Okay. Then Mr. Crouse goes on to say, "Meeting the ore at the port will never allow us to control the quality and chemistry of the crude we are ordering"; did I read that correctly?

Page 372

A. That's what it says.
Q. We've been talking about different types of ore, Guangxi 2, Guangxi 2A, I think we referenced.
What's the difference between Guangxi 2 and Guangxi 2A?
A. I don't know. If there's document that might speak to that.
Q. Who is Jim Kopp? K-o-p-p.
A. Jim was -- yes. He was the former manager of the Houston plant.
Q. And the Houston plant is the Imerys processing plant where the Chinese ore that will be sold to Johnson & Johnson is processed, correct?
A. That's correct.
Q. Let me show you what I'm going to mark as Exhibit 43.
(Exhibit 43 was marked for identification.)
MS. O'DELL: And I only have one copy of it, I'm sorry to say.
Q. (By Ms. O'Dell) It's an e-mail, and I'll try to walk us through together in a way that you can read it. And I think you'll be able to see it.
MR. PROST: Can we have a Bates stamp,

Page 373

please?
MS. O'DELL: It's Exhibit 43, IMERYS 058991.
Q. (By Ms. O'Dell) Okay?
A. Would you mind if I read it? Because it's hard for me to see that far.
Q. Okay. How about you take a look at it and then hand it back to me and then we can put it up on the --
A. That's fine.
Q. -- screen.
A. (Document reviewed.)
Q. All right. Quickly.
This is a -- appears to be a June 7th, 2006, e-mail. It's in French. I don't know French, but I'm just -- I believe that's June. So June 7, 2006. It's from Jim Kopp, the manager in Houston?
A. Mm-hmm.
Q. Processing plant, to J.F. Robert?
A. Yes.
Q. And Mr. Kopp asks, "Can you describe the difference between Guangxi 2 and Guangxi 2A to me? And should these two crudes be blended together as we unload them or should we keep them separate?"
And then J.F. Robert replies, "As far as the two grades are concerned, there is no difference.

Page 374

They come from the same deposit."
We're talking about talc deposit, correct?
A. Yes.
Q. "Mineralogy, whiteness and behavior and application are the same, but the suppliers are different. Guangxi 2A is produced by Guinguang whereas Guangxi 2 is produced by Huamei. The two different names are due to historical reasons so they can be mixed together and we have already done it many times (Number 2 is used to replace 2A when shortage). In fact, they normally arrive already mixed"; did I read that correctly?
A. That's what it says.
Q. And would it be true that Guangxi 2 and Guangxi 2A were blended together when sold to Johnson & Johnson?
MR. PROST: Object to form.
A. From that document, I cannot tell. Mr. Kopp, when he received the e-mail, he said, "Let's discuss." So they were going to evaluate. I don't see other information.
And as far as Mr. Robert says, that could have been -- he may have been talking about the sourcing and supply for the plants in Europe.
So I can't tell from that document.

Page 375

Q. Is there any employee of Imerys Talc America that regularly audits the Zhizhua mine operation?
MR. PROST: Object to form.
A. It's my understanding, not from Imerys Talc America.
Q. (By Ms. O'Dell) That responsibility is delegated to Mr. Bergstrom, who's an employee of Imerys Talc Europe?
MR. PROST: Objection.
A. That function is performed by him. That's my understanding.
Q. (By Ms. O'Dell) When the mine is audited by -- let me strike that and start again.
Has anyone from Imerys Talc America or any other Imerys entity had access to the drill cores from the Zhizhua mine?
MR. PROST: Objection.
A. Has anybody from where? From?
Q. (By Ms. O'Dell) I said Imerys Talc America or any other Imerys entities, to your knowledge, had access to the drill cores of the Zhizhua mine?
A. I don't know.
Q. Has any employee of Imerys Talc America

Page 376

or any other related Imerys entities had access to core logs from drilling that's taken place at the Zhizhua mine?
MR. PROST: Object to form.
A. I'm not aware if they have.
Q. (By Ms. O'Dell) Have you seen, in your preparation for your testimony today, any core logs from the Zhizhua mine?
A. No. If I did, they'd be in Chinese, and I wouldn't know how to read them anyway.
Q. Maybe, maybe not. You don't know, one way or the other.
A. Well, if they were in Chinese, I know that I couldn't read them.
Q. You haven't seen any --
A. No, I haven't.
Q. The answer is "no"?
A. I haven't seen any.
VIDEOGRAPHER: About an hour and a half left.
MS. O'DELL: Let's go off the record.
VIDEOGRAPHER: Off the record at 2:10.
(Recess taken.)
VIDEOGRAPHER: We are back on the record at 2:28.

Page 377

Q. (By Ms. O'Dell) In terms of the mining operations and the sorting process that takes place in China, what efforts -- or what actions do Imerys undertake to ensure that the talc supplied from the Zhizhua mine is within specification?
A. Generally speaking, it's my understanding that the mine is periodically audited. And we received a certification from the miner that the product meets our specifications.
Q. What actions does Imerys take to ensure that the certification provided by the mining company is accurate?
A. Well, once we receive the ore in Houston, we receive it into the plant. We quarantine it. As it's being received, we build a large composite representative sample of it. We batch it through the plant, making various finished-product typical samples from it. Those aren't finished goods that are sold to customers. That material is still quarantined.
We send those samples to Denver or our San Jose lab. And Julie Pier or her team does the analyses on those for us. So we confirm with our own testing that the ore meets our specifications before we use it.

Page 378

Q. Does Imerys do any testing of the ore while it is in China?
A. We may test it from time to time, but it's not our ore until we purchase it.
Q. I'll rephrase the question. Do Imerys employees -- strike that. Start again.
Does Imerys conduct any systematic testing of the Guangxi 2A ore while it is in China? Yes or no?
A. I don't know the detail of that part of the sourcing. The ore 2A -- we don't own the ore until we execute the purchase. And once we receive it into our Houston plant, we do our own exhaustive and rigorous testing to assure ourselves that it meets the specifications before we use it.
Q. So you're not aware of any activities for testing the ore that Imerys undertakes while it is in China, true?
A. I'm not aware of the details.
Q. And to your knowledge, Imerys has no consistent presence of an employee in China, true?
MR. PROST: Object to form.
A. What do you mean by "consistent"?
Q. (By Ms. O'Dell) I mean like on a continual basis, there's not an Imerys employee

Page 379

assigned to be at the mines in China?
And specifically, just to make sure my question's clear, there's no Imerys employee that's assigned to be at the Zhizhua mine on an ongoing basis, true?
A. You mean continuously?
Q. Yes.
A. I don't believe we have an Imerys employee continually there.
Q. During audits and when you have represented that Imerys or talc Europe employee, Mr. Bergstrom, is allowed to access to the mine, these audit trips you've mentioned, during those occasions, are samples taken for testing as a part of that audit process?
A. I don't know the details of that, but I would expect that samples will be taken.
Q. You don't know that?
A. I don't know that for certain.
Q. And during audits, are Imerys personnel -- let me ask it this way: During -- do Imerys employees have access to all areas of the Zhizhua mine that are used to source talc that is sold to J&J?
MR. PROST: Object to form.

Page 380

A. Based on my notes and the conversation with Mr. Bergstrom, the area of the mine from which Guangxi number 2 material is mined, I would expect that he would have access to that area of the mine.
Q. (By Ms. O'Dell) But you don't know that for certain, true?
A. I didn't ask him that.
Q. Let me ask you to look at what I'm going to mark as Exhibit 44.
(Exhibit 44 was marked for identification.)
MS. O'DELL: It's IMERYS 286003.
Q. (By Ms. O'Dell) Have you seen this flowchart before?
A. I've seen something similar, but the top-right section, I haven't seen one with that type of information on it.
Q. Are you talking about the box --
A. Yes.
Q. -- where it says, "Title"?
A. Yeah.
Q. And this is dated October 23rd, 2002?
A. Yes.
Q. And it's prepared by Michael Clark.
Do you know who Mr. Clark is?
A. He was a quality manager at the Houston

Page 381

plant.
Q. Is this a flowchart of the process for the manufacture of at least Imerys' portion of the manufacturing of Johnson & Johnson's talcum-powder products from the mine through the transportation process to America and then through a manufacturing or processing process at the Houston facility?
A. I haven't had a chance to really examine it in detail, but generally, it seems to cover the ore from when it's mined and graded to its receipt and as it's processed and through filling of a rail car.
Q. Let me -- since you're not familiar with that document, let me see if you're familiar with Exhibit 45.
(Exhibit 45 was marked for identification.)
MS. O'DELL: And it's IMERYS 2505958.
Q. (By Ms. O'Dell) This is a copy of a PowerPoint presentation, Rio Tinto Minerals, Luzenac, in Houston, operation, "Welcome Johnson & Johnson," June 2005.
Have you seen this document before?
A. No.
Q. If you'll turn to page 3, which is a slide entitled "Chain of Custody" -- do you see

Page 382

that? Do you see that?
A. Yes.
Q. And this is a chain of custody -- a slide about chain of custody. And, in part, it's called "Mine-to-Market Chain of Custody."
And that's referring to the talc being mined at the Zhizhua mine, through each step of the process, through Houston, correct?
A. Generally speaking. It's a -- probably a high-level overview. The other flowchart had many more steps in here.
Q. Right. Let me -- it says, "Gather samples for testing in" -- is that Toulouse?
A. Which box?
Q. First box on the top.
A. Oh, okay. I'm sorry. Yes.
Q. What's that referring to when it says "Gathering samples for testing in Toulouse"?
A. Toulouse, France.
Q. And what's in Toulouse, France, to your knowledge?
A. We have a laboratory, or Imerys -- an Imerys entity has a laboratory there.
Q. You said "we," but it's Imerys Talc Europe, correct?

Page 383

A. Yes. Imerys Talc Europe.
Q. What testing is performed in Toulouse?
A. I don't recall.
Q. Turn the page, sir. You'll see it says -- a slide entitled "Guilin Guiguang Talc Development Company." You talked about them.
They're the mining company, right?
A. Yes.
Q. And it has a copy of a certification. It says, "...hereby certify that the talc lumps produced from our mines and sold under our name brand is FREE of asbestos. Our production is checked on a regular basis and tested every quarter by the independent lab of Guangxi Shy University for asbestos and fibers in compliance with international regulations."
What type of testing is done at the Guangxi University lab, if you know?
A. I'm not sure. I think that it might be on the certificate that's been produced.
Q. What --
A. I thought I saw an exemplar here.
Q. Okay. I think you may be talking about the slide that has a certificate like this (indicating). And it has "Inspection Certificate

Page 384

of Quality"?
A. Yes.
Q. Do you see that?
A. Mm-hmm.
Q. This certificate does not have any results for asbestos testing, correct?
A. This particular one, I don't see it. I have seen examples that do. It's my understanding they've been produced.
Q. Let me ask you to turn over to a slide entitled "Imported Crude Ores Specifications."
And this is a specification of the crude ore for, you know, purposes of supplying talc to Johnson & Johnson; do you see that?
A. I don't see Johnson & Johnson's name on here.
Q. And I assume that because this presentation is to Johnson & Johnson, so it doesn't have Johnson & Johnson on that slide, but certainly this is a presentation that was given by Rio Tinto Minerals or Luzenac employees to some personnel from Johnson & Johnson.
And it says -- do you see the specifications, the lump size? That's referring to the sizes -- size of the talc rocks, correct?

Page 385

A. Yes.
Q. And it says specifications are between 30 and 500 millimeters; is that correct?
A. Yes.
Q. And I've written it on here because I'm not very good with metrics, but that's 1.2 inches to 1.64 feet.
A. That sounds about right.
Q. Let me ask you now to take a look at Exhibit 46. It is IMERYS 244919.
(Exhibit 46 was marked for identification.)
Q. (By Ms. O'Dell) Have you seen this document before, Mr. Downey?
A. (Document reviewed.) Parts of it look familiar. I don't know if I've seen this version, but I think I've seen something similar.
Q. This is a document entitled a "J&J/WW Talc Supplier Assessment Questionnaire."
And at the bottom it says it's June 23rd, 2009; do you see that?
A. Yes.
Q. And this is a talc-supplier questionnaire for Rio Tinto Minerals, Luzenac, correct?
A. Yes.

Page 386

Q. And question 1 says, "What specific address and identification of the source of the talc mine?" And you and I have talked about it a little bit, but it says the Guiguang Mine, Shaman Municipality, Long Sheng County, Guangxi Province, People's Republic of China.
Is the Guiguang Mine -- is that another reference to the Zhizhua mine but just using another name?
MR. PROST: Object to form.
Q. (By Ms. O'Dell) Or do you know?
A. I can't tell from this whether there -- it may have used the Guiguang Talc Development Company as the name of the mine accidentally.
Q. All right. Turn over to page 7 -- I mean, excuse me, page 2, and you'll see question 7: "Does the supplier," meaning Rio Tinto Luzenac, "have a SOP," standard operating procedure, "outlining their requirements for mine qualification?"
And the answer over here is, "Yes we have internal written procedures," and it has a document listed, "Mine Qualification SOP."
In your preparation for your deposition, had you seen a copy of mine qualification standard

Page 387

operating procedure?
A. Not that I recall.
Q. Were you aware, until I asked you the question, that there was such a thing as a mine qualification standard operating procedure?
A. I'm sorry. I was reading it.
Q. Before I ask you a question, let me just strike that and start again.
Were you aware that there was such a thing as a mine qualification SOP?
A. A written SOP? I've seen other things, but not "SOP" attached to it.
Q. If you'll turn over to page 3, question 13 says, "Describe the overall ongoing program for Mine oversight"; do you see that?
A. Yes.
Q. And it says, "The oversight is based on regular mine visits (3 to 4 per year) including audits (safety, environment, quality) and discussions with the operations management."
This says three to four times per year, but according to Mr. Bergstrom, it's actually two times a year.
MR. PROST: Object to form.
Q. (By Ms. O'Dell) Correct?

Page 388

A. At this time, that's what he said. This was in 2009.
Q. And it says that includes sampling testing of shipments and testing samples on supplier's request.
Has the Guilin Guiguang mining company asked that Imerys test samples?
A. I don't know.
Q. And then it says, (as read:) On a regular basis the lots checked -- excuse me, regular basis, the talc lots prepared for shipment are checked by RTM representative who performs a visual inspection, survey loading operation at the Chinese port.
What's the purpose of that visual inspection?
A. It's an inspection regarding -- it's a visual inspection to make sure that the ore hasn't been contaminated at the port.
Q. And it refers it a "RTM representative."
Who -- is that -- when it says "representative," is that referring to an RTM employee -- or a Rio Tinto employee?
A. In this document, it referenced either an employee or a contractor that would survey the

Page 389

ship and the hold to make sure that everything is clean.
Q. What contractor is engaged by RTM Imerys to inspect the ore at the port in China?
A. I don't know the name of the contractor or the company.
Q. Do you know the scope of their work?
A. Part of the scope is listed here on 2085958.
Q. But you don't know the entire scope of their work in relation to the activities at the port?
A. Generally speaking, I know that they inspect the ship's hold for cleanliness. They inspect the port facilities for storage for cleanliness. They're doing a visual inspection of the ore to make sure that it hasn't been contaminated.
They also -- they're called the surveyor, and they make a survey of the ship to determine the weight of the talc that's been loaded on the ship.
Q. I'll show you what I'm marking as Exhibit 47.
(Exhibit 47 was marked for identification.)
MS. O'DELL: And it has Bates stamp

Page 390

IMERYS 074887.
Q. (By Ms. O'Dell) Have you seen this document before?
A. I don't believe I have.
Q. And this is a PowerPoint entitled the "Geology, Mining, Processing and Surface Properties." Should have begun by saying "Talc Geology, Mining, Processing and Surface Properties" by E.F. McCarthy -- that'd be Ed McCarthy -- in May of 2014, correct?
A. Yes.
Q. And in regard to -- let me see if I can get that in focus here. Okay.
It's a slide titled "Talc Geology - Overview." It is about eight pages into the document.
Do you see that?
A. Yes.
Q. And this is a talc overview that covers China; do you see that?
MR. PROST: Object to form.
A. It says "China" there.
Q. (By Ms. O'Dell) It says, "Occurs as a relatively pure mineral and as a mixture with other minerals," and it lists chlorite, magnesite,

Page 391

tremolite, and quartz are the major accessory minerals; do you see that?
A. Yes.
Q. And it goes on to say that China produces almost 40 percent of the world's supply and is the world's largest exporter; do you see that?
MR. PROST: Object to form.
A. That's what it says.
Q. (By Ms. O'Dell) And do you have any reason to disagree with that?
MR. PROST: Objection.
A. No.
Q. (By Ms. O'Dell) And the next slide says there are four different paths to talc formation. And the first listed is metasedimentary. And it lists that -- China as a country where the talc deposits are a metasedimentary; do you see that?
A. Yes.
Q. Any reason to disagree with that?
A. Not that I know of.
Q. Let's turn further to the next page. And it says --
MR. SILVER: Excuse me. The copy the witness has doesn't have a Bates number, but you

Page 392

read a Bates number into the record, correct? Did we produce this in native form?
MS. O'DELL: That's correct.
MR. SILVER: Okay. So just so we understand this, and there was another exhibit, you guys put the Bates number on after the fact?
MS. O'DELL: Yes. We printed it in PDF and made a footer with a Bates number to make it clear, but that -- this is newly produced and --
MR. SILVER: Okay. Is there any representation, or can you give me a representation that other than adding the Bates number you didn't make any changes to the actual document?
MS. O'DELL: I will represent that to you 100 percent, sure and certain, I have not modified the PowerPoint.
MR. SILVER: I have satisfied -- I have satisfied the curiosity. Thank you.
MS. O'DELL: All right.
Q. (By Ms. O'Dell) Are there with -- are we on the same page now, Mr. Downey? It says, (as read:) Talc of metasedimentary origin have large amounts of chlorite with the host rock -- excuse me -- when the host rock is micaceous," and it includes China, right?

Page 393

A. That's what it says.
Q. And it says, up above, "Talc of ultramafic origin," Finland and Vermont, it says Finland and Vermont, "will have large amounts of magnesium carbonate." That's --
MR. PROST: Sorry. Object to form.
Q. (By Ms. O'Dell) Did I read that correctly?
A. I believe so.
Q. Do you have any reason to disagree with that?
A. No.
Q. Okay.
A. Well, I don't know about Finland, so . . .
Q. Well, I'm focused on Vermont, so I didn't ask about Finland.
Okay. Let me ask you to turn to -- it's about 20 pages into the document -- to a carbonate slide entitled "Typical Chinese Talc Beneficiation." I'll give you a minute to turn there. "Typical Chinese Talc Beneficiation."
A. I think we're getting closer.
Q. Yeah, there you go.
A. There we go.

Page 394

Q. All right. Do you see that?
And this is -- there's a picture of two, it looks like, females with carts and talc rocks; do you see that?
MR. PROST: Object to form.
A. Looks like they're pushing carts with stones.
Q. (By Ms. O'Dell) Most likely talc rocks, correct?
A. Most likely, yes, but they're not identified.
Q. And it says, "3 to 5 employees (2 to 3 sorters) per kton of ore"; do you see that?
A. Yes.
Q. And this is a picture of the hand-sorting -- part of the hand-sorting process in China, correct?
MR. PROST: Object to form.
A. By the title of the slide, that would seem to be indicated, but it doesn't say where.
Q. (By Ms. O'Dell) Okay. But it's in China, and ostensibly it's -- well, this is a presentation about Chinese talc, and that's what it describes in China. That's what the picture it's given for the beneficiation process in China,

Page 395

correct?
A. For this slide of that presentation, yes.
Q. I'll just leave it at that time.
Is there any other processing that takes place in China besides hand-sorting?
A. Screening.
Q. And what's the purpose for screening?
A. The screening is a process that removes the fines, in this case, I think the minus 30-millimeter fraction, so it was a screen at about 1.2 inches, by your math.
And depending on what's being screened, there can be some beneficiation that occurs at that stage.
Q. And what kind of beneficiation would that be?
A. Again, it depends on the particular deposit. In some cases, certain minerals will segregate to the fines fraction, so it depends.
Q. I'm asking specifically, and I should have been clear, specifically in regard to the Zhizhua mine and the processing that is performed on talc that's going to be sold to Johnson & Johnson, is there any other beneficiation

Page 396

process that is undertaken in China besides hand-sorting and the screening --
A. Screening.
Q. -- screening to remove the fines?
A. Is there any other beneficiation? Well, certainly, the selective mining is always the first step of beneficiation.
Q. Excuse me. I'm talking about out of -- it comes out of the mine and it's -- first it's hand sorted and then it's screened to remove the fine material. You're calling them "fines" --
A. That's right.
Q. -- f-i-n-e-s, but that means the fine material?
A. That's correct. But, again, beneficiation begins with selective mining.
Q. All right. Fair enough. I have a couple of other areas that I'm going to cover, so I'm going to change subjects.
We talked about the Chinese mine. We talked about the process in China, hand sorting and screening. The Chinese talc is then transported to the U.S., goes through the Houston process, and once -- the processing plant. And then it is, you said, loaded onto a rail car for purposes of being

Page 397

supplied to J&J's bottler, correct?
A. Generally speaking, yes, it is.
Q. And Johnson & Johnson's Baby Powder is bottled in Royston, Georgia; do you understand that?
A. Yes.
Q. And previously, before they sold the company, is it your understanding that Johnson & Johnson's Shower to Shower product was bottled in a facility in Missouri?
MR. PROST: Object to form.
Q. (By Ms. O'Dell) Correct?
A. My general knowledge of J&J's activity was that their products were bottled in Royston, Georgia.
Q. Is -- are you aware that, since 2006, Imerys has issued a materials safety data sheet in relation to its talc sold to Johnson & Johnson that includes a warning for ovarian cancer?
MR. PROST: Object to form.
A. I'm aware of an MSDS that we've supplied that includes information about ovarian cancer.
Q. (By Ms. O'Dell) How is that -- beginning in 2006 to the present date, how is that materials safety data sheet conveyed to the

Page 398

Johnson & Johnson bottling subcontractor?
MR. PROST: Object to form; outside the scope.
A. Generally speaking, it's sent to them.
Q. (By Ms. O'Dell) Electronically?
MR. PROST: Same objection.
A. Either electronically or via mail. Because we don't have a package in which we can ship it to them, we ship in bulk. We are a bulk supplier. We are -- we're shipping material to them, so we have to have it -- we're shipping in bulk, so we have to have a different mechanism to be able to provide the MSDS with it.
Q. (By Ms. O'Dell) In other words, if you're transporting -- the product's being transported from the processing plant in Houston to Royston, Georgia, by rail car, there's no really good place to attach a materials safety data sheet?
A. Yeah. They'd fly away in the winds.
Q. That's -- yes.
MR. PROST: Object to form; outside the scope.
Q. Okay. I'm going to transition and talk about, for just a few minutes, the West Windsor processing plant in Vermont.

Page 399

A. Okay.
Q. The West Windsor processing plant was a float-feed plant, correct?
A. It was a flotation plant.
Q. And I'm going to show you what I've marked as Exhibit 44 [sic].
(Exhibit 48 was marked for identification.)
MS. O'DELL: And that is document -- the Bates stamp is IMERYS 419470.
MR. PROST: You didn't mean 44, right? You meant 48?
MS. O'DELL: I did. 48. I'm sorry.
Q. (By Ms. O'Dell) You'd been to the West Windsor processing plant, correct?
A. Yes, a couple years before it was shut down.
Q. And it was shut down in 2003, correct?
A. Yes.
Q. Which -- it was shut down at the time that the talc for Johnson & Johnson's talcum-powder products stopped being sourced in Vermont and started being sourced in China, correct?
A. That's correct.
Q. And I want to ask you to turn to page Bates ending 479.

Page 400

A. I don't think that's in my . . .
MR. PROST: Yeah. It doesn't go that far. Mine doesn't.
MS. O'DELL: The beginning Bates is 419470 in your document.
MR. PROST: It's 308374.
MR. SILVER: No, 308384.
Q. (By Ms. O'Dell) Can I see what I've handed you? Maybe somehow the wrong -- wrong document . . .
Okay. I'm ask you to look at page 392 of Exhibit 48 and ask, Mr. Downey, is that an accurate description of the flotation process of the West Windsor Mill?
A. (Document reviewed.) I would say so, yes.
Q. What reagents were used as a part of the West Windsor processing plant?
A. I don't know if it says in this document or not. I think I might have seen this before. It might be MIBC. MIBC.
Q. What does that refer to?
A. I'm drawing a blank right now. I just recall that.
Q. As you're sitting here today, you're not

Page 401

able to tell us what chemical reagents were used as part of the flotation process at the West Windsor Mill?
A. Based on my recollection, it was MIBC. I'm just drawing a blank on what that stands for right now.
Q. It was a flotation process that took place at Windsor.
And what was the purpose of that flotation process?
A. Generally speaking, froth flotation is a beneficiation process by which minerals can be separated based on physical characteristics that can be -- based on the difference of physical characteristics of the minerals that can be exploited by chemistry, so to speak. You create a slurry of the crushed and milled to a liberation point of the minerals. So first of all, you have to make sure that the minerals are broken up enough and liberated so that one's not going to drag. They're still not attached. That's what "liberation" means.
And so you make a slurry of the minerals feed. And with the slurry, you can add chemicals, reagents, that will specifically target the

Page 402

chemistry of minerals so you can add a frothing agent as a collector, as an example, that will -- and in this slurry, you also create bubbles. That's how you get the froth. That's what "froth flotation" means.
And as the bubbles rise through the column of this slurry, the surface chemistry of the bubble with this flotation reagent added to it, and in this example, will attach to the talc. It'll collect the talc onto the bubble and rise it to the top with the froth, whereas the carbonate gangue mineral doesn't have the same surface chemistry, so it's not going to attach to the bubble, so it won't rise.
So you get talc that's rising, being floated to the top of this slurry, and the carbonate minerals don't, so they're depressed, and so you get this separation. And you do that through a series of tanks. You keep doing it over and over and over again until, at the end of the process, you have a concentrate of talc where you have increased the purity of it from what you began with.
Q. And the purpose of that process is to remove impurities or unwanted minerals from the

Page 403

talc ore, correct?
A. Yeah. To remove the gangue minerals.
Q. And what -- I can't hear what you're saying.
A. Gangue, g-a-n-g-u-e.
Q. How does that -- long does that frothing process, moving from tank to tank, typically take?
A. I don't recall, for the Windsor plant, how long that takes. It would go through a number of cells, through roughers and cleaners.
Q. Do you recall how large the flotation tanks were at the West Windsor Mill?
A. I don't.
Q. And reagents or chemicals were added to the slurry, and that slurry is the talc ore plus water plus chemicals, correct?
A. Yes.
Q. And you referred to MIBC?
A. I think that's what it was.
Q. Are you familiar with methyl isobutyl carbinol?
A. That sounds familiar.
Q. Is that a frother?
A. I think so. I can't remember at this time, but I think that's what it was.

Page 404

Q. Is there also a collection agent used to, you know, make the talc adhere or collect?
A. Well, talc is -- it's a unique mineral. And it's kind of a natural floater. So you don't need -- my general understanding -- and I'm not -- I'm not skilled in the art of flotation, so to speak, but I know generally how it works.
But I think that it doesn't take much of the MIBC to enhance the separation.
Q. What efforts did you undertake to familiarize yourself with the West Windsor process in preparation for your deposition today?
A. I had reviewed other materials earlier this year about flotation about West Windsor.
Q. And just to verify, you don't use a -- it's your understanding that a collection agent is not used as a part of the Windsor froth flotation process?
A. I'm going off my memory. I don't recall if there were other reagents used.
Q. Do you know if there are any other chemicals that were used as a part of the West Windsor processing plant?
A. In what regard? In flotation?
Q. Yeah. In terms of the flotation

Page 405

process -- let me ask a better question -- were there any other chemicals added to the flotation process?
A. There might have been. I just don't recall. And they might have done testing on some.
Q. Who would have, either Imerys current or former employee, information about the West Windsor Mill process?
A. In terms of the chemistry or what chemicals were used?
Q. Chemistry and also the -- you know, the mechanics of the process, how it happened, the machinery involved, the -- or equipment involved, the chemicals that were involved in the process.
A. That plant's been shut down. I spoke with Robin Reilly. She was familiar with, generally, flow sheet of it, but her role was over at Ludlow where she was testing samples that had come from West Windsor.
Q. Was hydrochloric acid a chemical that was used in the process, to your knowledge?
A. I don't recall.
Q. Let me ask you to turn back to Exhibit 48.
And while I do that, if asbestos fibers were

Page 406

in the talc ore that was being processed at the West Windsor facility, certainly one of the purposes of that beneficiation process would be to remove any fibrous material.
MR. PROST: Object to form.
Q. (By Ms. O'Dell) True?
A. I don't recall whether or not that could be done. My understanding is that the ore control began with selective mining, and then we increased the purity of the talc at the flotation concentrator, but I'm generally not aware of whether or not it was the intent of the flotation process, so I don't know.
Q. The flotation process was intended to remove contaminants. We've agreed on that?
A. To remove the gangue minerals. To generally increase the purity of the talc.
Q. To remove the unwanted minerals?
A. Yeah.
Q. And certainly asbestos was in the ore itself. Was it one of the purposes of the beneficiation process to remove material like that?
MR. PROST: Object to form.
A. It might have, but it's my understanding that that was done with selective mining at the

Page 407

mining stage.
Q. (By Ms. O'Dell) And the only effort made to ensure that asbestos fibers were not a part of the talc ore was selective mining, according to your understanding?
MR. PROST: Objection.
A. Well, it's an understanding of the overall geology of the deposit that informs how selective mining is done.
Q. (By Ms. O'Dell) So the answer to my question is "yes"?
MR. PROST: Object.
A. I don't know if -- I'm not familiar, and I don't know if flotation was intended to remove asbestos, but to my knowledge, our products don't contain asbestos, so . . .
Q. (By Ms. O'Dell) Let me ask you to take a look at what I'm marking as Exhibit 49.
(Exhibit 49 was marked for identification.)
Q. (By Ms. O'Dell) This is a PowerPoint presentation, IMERYS 3081025.
And if you'll turn -- well, first, before I ask you to do that, this is a PowerPoint presentation prepared by Ed McCarthy, February 2010?

Page 408

A. That's what the cover page indicates.
Q. And I'd ask you to turn to page Bates ending 030. Sorry. I pulled the wrong page. Excuse me. 032.
A. Can you give me a moment to familiarize myself? (Document reviewed.)
Q. Have you seen this PowerPoint before?
A. No. Well, some of it seems repetitive to one of the other ones we just saw, but I haven't seen this particular one.
Q. Okay. Turn to 032. Do you see that? The title of the slide is "Talc of Ultramafic Origin." And Mr. McCarthy lists Vermont as having talc of that type.
We agree on that, don't we?
A. Yes.
Q. And he says, "Talc of Ultramafic Origin," last bullet, should "Not be used for cosmetics unless beneficiated by flotation"; do you see that?
MR. PROST: Object to form.
A. That's what it says.
MR. PROST: Well, to be clear, the word "should" not be used. The word "should" was not in there.

Page 409

Q. (By Ms. O'Dell) Okay. It says, "Not used for cosmetics unless beneficiated by flotation."
A. That's what it says.
Q. Is that fair?
And we've been talking about the flotation process at Vermont, and that's West Windsor, true?
A. Yes.
Q. And -- so according to Mr. McCarthy, that if you use talc for Vermont and use the flotation process, then it appears he thinks that's okay for cosmetics --
MR. PROST: Object to form.
Q. (By Ms. O'Dell) -- is that a fair summary?
A. You're putting words in his mouth. I'm -- I'm -- I don't know what you mean by that.
Q. Okay. Well, I'm just saying, not -- that ultramafic -- talc of ultramafic origin, he says, "Not used for cosmetics unless beneficiated by flotation"?
A. Well, the ultramafic talc deposits are, you know, somewhere around 50 percent talc, so, by definition, they're -- they don't meet the criteria for cosmetic talc. You have to do something with

Page 410

them.
Q. Okay. And fair enough. Let me ask you to turn to page ending 081043, ending 43. Are you on the page, sir? "Talc Beneficiation," do you see that? Then it has, second bullet, "Rejection of fibrous minerals"; do you see that?
A. Yes.
Q. "Can be selectively rejected and levels reduced by flotation and manual sorting, but they cannot be eliminated to meet cosmetic standards"; do you see that?
MR. PROST: Object to form.
A. That's what it says.
Q. (By Ms. O'Dell) That's right.
And in this -- in the context of Imerys' supply of talc for purposes of Johnson & Johnson's talcum-powder products, West Windsor would be a flotation process, true?
MR. PROST: Object to form.
A. Yes.
Q. (By Ms. O'Dell) The Chinese mines would be a manual sorting beneficiation process, true?
A. Sorting and screening is what we discussed.
Q. Okay. And that's China, true?

Page 411

A. Pardon?
Q. That's in China, correct?
A. Well, in China. I don't know if he's specifically referencing that, but -- I think he's making general statements about beneficiation.
Q. But the process -- the beneficiation process in China is manual sorting, correct?
MR. PROST: Object to form.
A. Beneficiation process in China, as we discussed earlier, begins with selective mining in the pit, and it also includes screening and manual sorting.
Q. (By Ms. O'Dell) And according to Mr. McCarthy, these procedures, flotation and manual sorting, cannot eliminate fibrous minerals to meet cosmetic standards --
MR. PROST: Object to form.
Q. (By Ms. O'Dell) -- isn't that the import of that bullet in this PowerPoint?
MR. PROST: Objection.
A. He said that, but in the context of what type of deposit he's specifically talking about, the variation -- or the different types of deposit, you know, one of the slides earlier is all the talc deposits are different. And they are different.

Page 412

And you need to consider the differences in the geology of the talc deposits and the differences in how it's mined.

Taken on its face, I would -- I don't know why he was stating this because, for years and years and years, we made cosmetic-grade product from West Windsor and also from Houston. So -- and I know that Ed is well aware of that. So I don't know what he was saying with regards to what he meant here.

Q. (By Ms. O'Dell) He is technical director at Imerys when he's writing this PowerPoint. And he states that -- and he's referring to fibrous minerals -- "Can be selectively rejected and levels reduced by flotation and manual sorting, but they," referring to fibrous minerals, "cannot be eliminated to meet cosmetic standards," correct? It's what he states.

It's what he states, correct?

MR. PROST: Objection.

A. I think you're cherry-picking from a document. He stated it that way. I don't disagree that he used those words on this page. I don't understand the context by which he means, because I know that Mr. McCarthy was quite aware of the fact

Page 413

that we can and did and continue to do -- produce cosmetic-grade talc at West Windsor as well as in Houston.

Q. (By Ms. O'Dell) He goes on to say, "Only strong acid digestion, which is not an economically viable process, can completely eliminate these contaminants," talking about fibrous minerals; did I read that correctly?

A. You read it correctly, but, again, I do not know the context of which Mr. McCarthy was making these statements. We skipped over several pages. I don't know if he has -- if he was trying to explain different subtleties, but I do know that Mr. McCarthy is well aware that we make cosmetic grade from West Windsor and Houston, and that our products meet the cosmetic standards and do not contain asbestos.

MS. O'DELL: Let's take a quick break.

MR. PROST: Sure.

VIDEOGRAPHER: Going off the record at 3:30.

(Recess taken.)

VIDEOGRAPHER: We're back on the record at 3:54.

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Page 414

EXAMINATION

BY MS. SCOTT:

Q. Good afternoon, Mr. Downey. My name is Carmen Scott. We met yesterday. I am also representing the plaintiffs in this action. I'm going to ask you a few questions this afternoon. I'm going to apologize for a couple of things. I apparently have a summer cold, and so my voice is a little bit foggy. I also tend to speak quickly sometimes. If I do that, I understand you're a little hard of hearing, please ask me to slow down, enunciate better, I will do all those things for you, okay?

A. That sounds good. Thanks.

Q. Let me start by asking you something -- we met here yesterday for your deposition, and we were here for a long day, correct?

A. Yes.

Q. Did you speak to anyone last night regarding your testimony in this matter?

MR. PROST: Objection.

A. In terms of specifics?

Q. (By Ms. Scott) In terms of -- yes, let's start with specifics.

MR. PROST: Obviously, don't talk about

Page 415

anything you talked about with counsel.

A. I told my wife how the day went, but I didn't tell her any specifics that I test -- you know.

Q. (By Ms. Scott) Did you speak to anyone else?

A. I spoke to Andrew Cary, but I don't recall speaking of specifics.

Q. And tell us who Andrew Cary is.

A. He's counsel with Gordon & Rees.

Q. Did you speak to anyone who is a current employee at Imerys regarding your testimony in this case?

A. No.

Q. Did you speak to any former employees of Imerys about your testimony?

A. No.

Q. Anyone else that you spoke to about your testimony?

A. No.

Q. Or about this matter in general?

A. No.

Q. We've talked a little bit about sampling over the past day and a half. What I want to ask you is just a couple general questions about

Page 416

sampling and the process of sampling.
What is the purpose of sampling?
A. The purpose is to get a representative fraction of the material that you're trying to gain some knowledge about, you know, to do some sort of analyses on.
Q. Is it fair to say sampling is a way of trying to determine what is in the mine that you're mining for whatever purpose?
A. For quite a variety of purposes, but yes.
Q. Okay. And is a purpose of sampling also to determine whether the materials being mined are safe for their intended uses?
MR. PROST: Object to form.
A. Well, I mean, the purpose of sampling is to get material on which you can do quite a variety of testing, and whether that's at the mining stage or at finished-product stage, you know, that would include all of the specifications for the product.
Q. (By Ms. Scott) Tell me about the role -- well, let me back up.
Who is responsible for taking samples, in general?
MR. PROST: Object to form.

Page 417

A. It really depends on at what stage.
Q. (By Ms. Scott) Okay. Let's talk about in the pit.
A. Okay.
Q. Okay. Who's responsible for taking samples in the pit?
MR. PROST: Object to form.
A. The geologist will take the samples from the blast holes in the pit.
Q. (By Ms. Scott) Tell me when the -- what is the role of the mine operator?
MR. PROST: Object to form.
A. What do you mean "mine operator"?
Q. (By Ms. Scott) Is there a title -- is there a mine operator?
MR. PROST: Object to form.
A. Are you -- are you asking about an equipment operator or --
Q. (By Ms. Scott) And that was a bad question, so let me back up.
Is there someone who -- at the mine -- who has overall responsibility for managing the entire process?
MR. PROST: Objection.
A. That typically would be the mine manager

Page 418

or in some cases of a small site that has different, you know -- like a mill and a mine, it might be the site manager.
Q. (By Ms. Scott) Okay. And that mine manager or that site manager, does that individual have responsibility for overseeing the loading of ore?
MR. PROST: Objection to form.
A. What do you mean? The loading of ore at what stage?
Q. (By Ms. Scott) Well, at every stage. I'm asking you whether there is someone with ultimate responsibility at the mine for overseeing all the operations.
MR. PROST: Object to form.
A. It depends on the particular mine, how big it is, you know. Is there a lot of staff? From operation to operation, it depends whether, you know, there's a single manager at a mine or a manager across multiple sites. So it really depends.
Q. (By Ms. Scott) Okay. And let me be more specific, then.
At Argonaut, was there a specific mine operator, one person, who oversaw the entire

Page 419

operation?
MR. PROST: Object to form.
A. That oversaw just the operation of the mine? I'm trying to be helpful. I just am having a hard time -- I don't know that we're communicating on the same plane.
Q. (By Ms. Scott) Sure. And I appreciate that. I'm just trying to figure out, of all the employees at the mine, of all the different levels and the chain of operation at the mine, if there's someone at the top who's responsible for all of it.
MR. PROST: Object to form.
A. Generally, there can be a mine manager.
Q. (By Ms. Scott) Okay. Was there a mine manager in place at Argonaut?
MR. PROST: Object to form.
A. I think, at different periods, there may have been a mine manager. In other cases, it may have been a site manager, so it depends on time.
Q. (By Ms. Scott) Okay. And if the single individual was not in control, is it fair to say that there were various individuals at the different operation sites within the mine that would have responsibility for those individual sites?

Page 420

MR. PROST: Objection.
A. Well, now you're saying "the mine," and these sites might be more than just a mine, so I'm just trying to be as careful as I can to answer your question in the context of what I have knowledge of.
Q. (By Ms. Scott) Sure. And I used the term "sites," and I shouldn't have used the term "sites."
Other than the person ultimately responsible at Argonaut for some period of time, there are different operations that happen within the mine, correct?
MR. PROST: Objection to form.
A. Let's say different functions.
Q. (By Ms. Scott) Different functions, okay.
And for those different functions, was there an individual who had ultimate responsibility for that function in the mine?
MR. PROST: Objection.
A. Generally so. I mean, like, the geologists, you know, they have responsibilities for the geology, the ore control, the development drilling, the blast drilling, all that stuff.

Page 421

Q. (By Ms. Scott) Okay. And who did the geologist report to?
A. Depending, again, on time, it could be the mine manager or it could be off-site.
Q. But it varied over time?
A. I believe it varied over time.
Q. Regarding sampling, in general, if ore was recognized as being variable in quality, was sampling taken from that ore more often?
MR. PROST: Object to form.
A. I don't know what you mean by "more often."
Q. (By Ms. Scott) More often than a standard operating procedure might require.
MR. PROST: Objection.
A. Do you mean more often spatially or temporally?
Q. (By Ms. Scott) Both.
A. Perhaps. I mean, I'm --
Q. You don't know?
A. No, I'm just -- I'm trying to get a sense for what you mean by -- by "variability."
Q. Okay. Well, is it fair to say that within mines, there can be variability of the mineral within the ore?

Page 422

MR. PROST: Objection; form.
A. Variability of mineral -- what do you mean by "mineral in the ore"?
Q. (By Ms. Scott) Okay. Well, we'll come back to that. How about that?
We'll take a look at a couple of different SOPs in a moment, but how is it determined what amount is taken for a sample?
MR. PROST: Object to form.
A. How is it determined?
Q. (By Ms. Scott) Mm-hmm.
A. Generally speaking, to get a representative sample. That's generally what determines that.
Q. And tell me what you mean by "representative."
MR. PROST: Object to form.
A. Generally speaking, a sample that would be representative of the overall material that is being sampled.
Q. (By Ms. Scott) Okay. Is there any way to quantify what a representative sample would be for a given mine?
MR. PROST: Object to form.
A. I think it depends on the parameter

Page 423

that's being analyzed, and that can vary.
Q. (By Ms. Scott) Okay. And what do you mean "the parameter that's being analyzed"?
A. Whether it's the overall chemistry, specific mineralogy, color. It really depends.
Q. And so does that amount that equals the representative amount -- does that vary based on whether you're looking for color or mineralogy, et cetera?
MR. PROST: Object to form.
A. I'm not sure what you're asking. Can you have it read back?
Q. (By Ms. Scott) Yeah. Well, let me rephrase it. What I'm just generally trying to figure out is -- we see the term "representative sample." We've talked about the term "representative sample," but how -- who determines that the sample, the amount taken and how it's taken, is actually representative? What is that based on?
MR. PROST: Object to form.
A. Generally, it's the repeatability, that if you take another sample from the same area, you'll get the same or similar results within a certain tolerance.

Page 424

Q. (By Ms. Scott) We talked a little bit earlier today, and some yesterday, about extracting ore for cosmetic talc.
Do you remember those discussions?
A. I remember some.
Q. Okay. Sure. Fair enough.
And as I recall your testimony, correct me if I'm wrong, a lot of the -- well, the determination of which ore to pull depends on the equipment operators; is that fair?
MR. PROST: Object to form.
A. The decision to --
MR. PROST: Misstates testimony.
A. I'm not sure what you mean by "the decision to pull."
Q. (By Ms. Scott) The decision to take from the mine, a particular area of the mine, that depended on the equipment operators?
MR. PROST: Object to form; misstates testimony.
A. Well, the decision on where to mine and what to mine would be from the geologist. You know, that would be communicated to the operator. The actual maneuvering of the machine in order to execute that activity would be the role of the

Page 425

equipment operator.
Q. (By Ms. Scott) But as I understood your testimony, that equipment operator has some discretion to determine what to grab with that equipment?
MR. PROST: Object to form.
A. I don't really know what you mean by "discretion." He needs to meet the requirements as established by the geologist to meet the quality of the ore.
Q. (By Ms. Scott) And is it left up to the equipment operator to determine whether that operator is taking quality ore?
MR. PROST: Objection.
A. I don't know what you mean by "left up to the operator."
Q. (By Ms. Scott) Well, okay. I understand your testimony to say that the equipment operators had to determine, by color, whether the ore was cosmetic-grade or not.
MR. PROST: Objection.
A. Color is one of many attributes that the shovel operator could use, along with instruction from the geologist as well as information about the quality that was derived from blast-hole

Page 426

information. So it's not -- it's not just visual. There's a lot of information that is utilized to make the decisions on selective mining. And it's not one single person that makes that decision. It's an informed choice informed by data as well as the geology as well as experience.
Q. (By Ms. Scott) Okay. And do you have any understanding as to what training equipment operators in China undergo prior to undertaking the job of selective mining?
MR. PROST: Object to form.
A. No.
Q. (By Ms. Scott) And as I understand your testimony from yesterday, you're not aware of any -- of whether or what type of training equipment operators in Vermont undertook prior to engaging in selective mining; is that correct?
MR. PROST: Objection.
A. I don't recall my specific testimony, but generally, I don't know the detail of their training.
Q. (By Ms. Scott) Mr. Downey, is it fair to say that ore bodies are complex?
A. They can be, some of them.
Q. And they can include several different

Page 427

rock types?
A. Some can.
Q. And is it fair to say that veins of different rock can run from one ore site to another ore site?
MR. PROST: Object to form.
A. Ask that again.
Q. (By Ms. Scott) Sure. Is it fair to say that veins of different rock can run from one ore site to another ore site?
A. "Vein" is actually a term that I normally use for ore itself.
Q. When we're talking about the different formations of rock, they don't form in perfect cylinders perpendicular to the earth, correct?
A. Are we talking about talc?
Q. We're talking about different rocks, different types of -- different types of minerals.
A. Well, there are some basalt type that actually do form cylinder column.
Q. Okay. Fair enough. Okay.
Does talc form in perfect perpendicular cylinders?
A. No.
Q. And we've seen that from some of the

Page 428

testimony earlier, that when the cores are pulled, we see different types of minerals throughout the several hundred feet of core that are pulled; is that right?

A. Sure. Mm-hmm.

Q. And would the same be fair to say for minerals that we might consider to be hazardous, that they don't form in perfect perpendicular cylinders?

MR. PROST: Object to form.

A. That really depends on where, but generally speaking, I don't know that they form in perfect cylinders, as you asked.

Q. (By Ms. Scott) Sure. So if ore is taken from one site and then another -- strike that.

If ore is taken from one drill hole and then taken from another drill hole ten or a hundred feet away, we're not guaranteed the same type of minerals in each of those drill holes, even if they're a relative proximity of one another, correct?

MR. PROST: Objection.

A. I don't know what you mean by "or taken from" one drill hole versus another.

Page 429

Q. (By Ms. Scott) Okay. Core. If core is taken from one drill hole and then another ten feet away, we're not guaranteed to see the same types of minerals in those cores, correct?

A. The same types of minerals?

Q. Right.

A. Depending on the geology, the same types of minerals can be present.

Q. But it's not guaranteed, correct?

A. Guaranteed. I suppose not.

Q. Okay. Therefore, would it not be accurate -- strike that.

Would it be more accurate to sample from each drill hole rather than a composite of drill holes to determine what minerals are within the drill hole?

MR. PROST: Object to form.

A. I'm not sure what you're asking.

Q. (By Ms. Scott) Okay. In looking at a particular area on a map where core samples are taken, does Imerys abide by a particular percentage of the area that should be sampled?

MR. PROST: Object to form.

A. Percentage of an area?

Q. (By Ms. Scott) Right.

Page 430

A. My recollection is that we drill the ore body at the exploration stage on a drill spacing of X many feet, and right now, I'm drawing a blank on what that is. Then we further refine that and do development drilling on closer spacing, and then we do blast-hole drilling down to about eight-foot centers.

So we continue to gather information at closer and closer intervals. The closer it comes to the period in which we're actually going to be extracting and mining the ore and removing the waste.

Q. Would you agree that it's important to have a representative sample site for each area or region of the mine that is intended to be used for cosmetic talc purposes?

MR. PROST: Object to form.

A. Ask again.

Q. (By Ms. Scott) Sure.

A. Because I don't know that I'm really following that question.

Q. Okay. Do you agree that it's important to have a representative sample for each area or region of the mine that is intended to be used for cosmetic talc?

Page 431

A. Yeah.

Q. Explain the process of blast sites.

What happens when blasting occurs to produce ore?

MR. PROST: Object to form.

A. Generally or specifically?

Q. (By Ms. Scott) Generally and then specifically. How about that?

A. I shouldn't have asked.

You begin by drilling holes on a specific pattern or interval. It can be a rectangular pattern or a square pattern, typically. You then place an initiator device, like a booster, and blasting cap at the bottom of the hole, and then you put a column of blasting material on top of that, in the hole. And then you confine that with either crushed stone or grill cuttings from the collar of the hole that are pushed back in the hole to confine the blasting agent. Actually, what the purpose is, to confine the blasting energy so that that energy is transmitted into the rock to fracture the rock so that you can dig it. So that's what you do on one hole.

And for a particular blast of whatever the pattern is, you put the boosters in all of the

Page 432

holes and fill them in the manner in which I just described.
Then you also use timing delays that are a combination of what we call down-hole delays and surface delays. And what those are are timers that sequence the initiation of the blast in the holes. And the timing and the pattern on which you do that is how you control the blast. And in many cases, an operator will choose to blast waste and not blast ore in the same -- in the same -- we call them "shot," and then come in later and drill out the holes in the ore area or fill the holes that had already been drilled and identified as ore, fill those similarly, design the pattern to control the fragmentation and any directional blasting, and, you know, make those blasts separately.
Q. Okay. Is there ore that is extracted from blast holes?
A. What's left from the hole in the ground is a hole, so . . .
Q. Okay. What is discrete sampling?
A. I'm sorry?
Q. What is discrete sampling?
A. Probably depending on the purpose, would be maybe just a grab sample of just a particular

Page 433

item.
Q. So as opposed to composite sampling, it would be an individual sample from an individual area; is that fair?
A. I'd really need more context.
Q. Sure. Let me ask it this way.
In discrete sampling, if a contaminant is found, you would have an idea of how -- of that area to avoid for future mining, correct?
MR. PROST: Object to form.
A. I don't know what you mean by "contaminant." Where it is relative, you know, what it is, you know, I don't know how to answer your question.
Q. (By Ms. Scott) In discrete sampling, if tremolite was found, would Imerys know to avoid that area for future mining for cosmetic talc use?
MR. PROST: Object to form.
A. I'd say yes.
Q. (By Ms. Scott) And composite sampling is a combination of multiple discrete lots; is that fair?
A. I don't know if I'd characterize it quite like that.
Q. Okay. How would you characterize it?

Page 434

A. Well, for example, down-hole compositing would be to composite several intervals that are adjacent to each other. Typically, you don't typically cross a rock-type boundary with a composite sample. You end at the -- the composite would terminate if it transitions into a different rock type, unless the -- there's a repeating sequence of one rock type versus another and they're closely spaced, and then you might take a sample that represents that zone so that you can understand, in general, tightly spaced, what that would be. But, I mean, we're talking generalities.
Q. Sure. Do you disagree that within the Argonaut -- excuse me, within West Windsor that there were composite samples made from different areas that were not necessarily in the same interval?
MR. PROST: Object to form.
A. Can you read the question again?
Q. (By Ms. Scott) Sure. Do you disagree that within West Windsor, that there were composite samples made from different areas that were not necessarily in the same interval?
A. Well, Windsor's the float plant, so --
Q. I'm sorry. In -- let's just say

Page 435

Vermont.
MR. PROST: Object to form.
A. Ask again, please.
Q. (By Ms. Scott) Sure. Well, let me ask a different question.
Do you disagree that at any mines in which Imerys has or had control over, the composite sampling was made of multiple discrete lots versus material within the same interval?
MR. PROST: Object to form; outside the scope.
A. I would need to see what was being composited to really be able to answer your question. That is different sampling for different purposes.
Q. (By Ms. Scott) Do you agree that most of the sampling that was conducted at Imerys was composite sampling?
MR. PROST: Object to form.
A. I don't think I have any idea how to even determine "most" in that case.
Q. (By Ms. Scott) What other -- well, strike that.
What is a certificate of analysis?
A. It's a document that we supply to our

Page 436

customers that indicates to them the specifications of the product and whether or not the product that was manufactured for them at that specific time -- whether or not it met those specifications.
Q. And is a certificate of analysis tied to a single source within the mine, a single source, a discrete sample, so to speak?
MR. PROST: Object to form.
Q. (By Ms. Scott) I think the answer's going to be no. Let me back up.
Is a certificate of analysis based on a composite sample?
MR. PROST: Object to form.
A. A certificate of analysis is made on finished goods. So we were talking about sampling at the mine, and now you've jumped to finished-goods sampling. So I want to make sure we're understanding each other and not talking about mining samples, because your first question was, did it relate to a discrete sample in the mine? So we're talking about finished-good sampling.
Q. (By Ms. Scott) Okay. And how does Imerys determine the traceability that a -- for the minerals that are subject to a certificate of

Page 437

analysis?
MR. PROST: Object to form.
A. For what aspect?
Q. (By Ms. Scott) So how does Imerys certify that the particular minerals subject to the certificate of analysis are good for their intended use?
MR. PROST: Object to form.
Q. (By Ms. Scott) How do they trace those minerals back?
A. Trace them back where?
Q. To the mine to make certain that they are not contaminated.
MR. PROST: Object to --
Q. (By Ms. Scott) Do they rely on samples for that purpose?
A. Rely on samples --
MR. PROST: Just object to form.
A. We conduct sampling.
MR. PROST: I'm not clear if you're talking about Houston or Vermont or China or -- it's -- that's my -- I'm -- the transcript's not clear on that.
MS. SCOTT: Sure.
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Page 438

(Exhibit 50 was marked for identification.)
Q. (By Ms. Scott) Mr. Downey, I'm going to hand you what's been marked as Exhibit 50 to your deposition.
A. Can I move this back? Because otherwise, I won't be able to see you, the stack got so tall.
Q. You may. Let's move it in a way that doesn't disturb our court reporter, make her life miserable.
MR. PROST: I want to make sure we keep all the exhibits maybe together toward the court reporter. I guess that's good if you want to stack it there. Is it off the camera?
Q. (By Ms. Scott) Mr. Downey, what is this document?
MR. PROST: Object to form.
A. (Document reviewed.) It is a 1988 standard operating procedure, Windsor Minerals, Inc., for the procedure of sample collection.
Q. (By Ms. Scott) Okay. And this is dated January 1988, correct?
A. Yes. About a year, almost to the date, prior to Cyprus acquiring Windsor Minerals.
Q. Okay. Have you seen this document

Page 439

before?
A. I'm not sure if I have or not.
Q. The first paragraph reads, "The following is a guide for the collection of production samples. Normal production samples will be taken by laboratory technicians"; did I read that correctly?
A. Yes.
Q. And the production samples will be taken for what purpose? To make what determinations about the samples?
MR. PROST: Object to form.
A. It depends. You know, it could be a number of quality parameters, either finished goods or in-process. So depends.
Q. (By Ms. Scott) Okay. At the top -- just under that, we see the sample for microbes; is that right? Did I read that correctly?
A. It says -- okay. Yes.
Q. Okay. And the sample is collected at the microbe, grab, simpler located above the flash dryers, correct?
A. Yes.
Q. And when we see the word "grab," is that what you were talking about when I asked you about

Page 440

discrete samples earlier?
MR. PROST: Object to form.
A. I'm not sure.
Q. (By Ms. Scott) Okay. Fair enough.
And below that in the next section, we see "Sample: 66 Finished Product," right?
A. Yes.
Q. And sample 66, the intended use of that was what?
MR. PROST: Object to form; outside the scope.
A. The what?
Q. (By Ms. Scott) I'm sorry. Product 66, what was the intended use of product 66?
MR. PROST: Objection.
A. What do you mean "the intended use"?
Q. (By Ms. Scott) Was it for cosmetic talc?
A. Yes.
Q. Do you know whether this sample collection procedure was in place when Cyprus took over?
A. It says its effective date was one year prior. My recollection of the supply agreement included reference to a whole list of standard

Page 441

operating procedures that J&J had in place prior to the acquisition.
(Exhibit 51 was marked for identification.)
Q. (By Ms. Scott) Mr. Downey, I've handed you what's been marked as Exhibit 51 to your deposition. And we see that this is a standard operating procedure for Windsor Minerals, dated June 10, 1987, and the procedure is silo composites; did I read that correctly?
A. Yes.
Q. And have you seen this document before?
A. Don't know.
Q. Okay. The first paragraph reads, (as read:) A composite is prepared from the 66 or 99 grade shift composites.
A. "96."
Q. What did I say? Did I not --
A. "99."
Q. I'm sorry. "66 or 96 grade shift composites."
Now did I read that correctly?
A. I think so.
Q. Okay.
A. You're as tired as I am.
Q. Yes.

Page 442

Mr. Downey, what do silos look like?
A. At West Windsor, I believe they were concrete silos.
Q. And I grew up in the country. Some people on the jury might have, too.
When I think of a silo, I think of a big metal bin in the middle of a field that holds corn, but that's not what we're talking about here, right?
A. Well, this was a concrete bin, contained in the West Windsor plant. It was inside.
Q. And do you know how much product a silo held -- could hold?
MR. PROST: Object to form.
A. It depends on the diameter and the height and the density of the material, so it would depend.
Q. (By Ms. Scott) Okay. We see here under the procedure that the person gathering the composite is to "Put one 400-milliliter ladle from the 66 daily composite into the silo composite from each day the production is going into that silo," correct?
MR. PROST: Object to form; outside the scope.

Page 443

A. That's what it says.
Q. (By Ms. Scott) And you've been to West Windsor; is that correct?
A. Yes. A long time ago.
Q. And have you seen the silos that are referenced here?
MR. PROST: Object to form.
A. I don't recall seeing the silos.
Q. (By Ms. Scott) After the silo was full, the silo composite is mixed well, right?
MR. PROST: Object to form.
A. That's step number two.
Q. (By Ms. Scott) Okay. And here, does the composite mean that the ore can come from places within the mine?
MR. PROST: Object; outside the scope.
A. What?
Q. (By Ms. Scott) Tell me what makes up the composite that's being placed into the silo.
MR. PROST: Objection.
A. It's stated here. From the daily composite.
Q. (By Ms. Scott) Right, but what is the daily composite? What makes up the daily composite?

Page 444

MR. PROST: Objection.
A. Grade 66 was produced on a campaign basis, so as the grade 66 was being processed -- when the float feed was being processed for grade 66, that production would be going into the silo. And they would, as explained here, take portions of the daily composite and use them to create a composite sample for the silo and then mix that sample well.
Q. (By Ms. Scott) Okay. So do you have any knowledge of how many days and how many 400-milliliter ladles it takes to fill the silos such that it can be mixed well in step number 2?
A. I don't recall.
Q. And the example here they give in number 3, they start at June 6, 1987, and go to June 10th, 1987; do you see that?
MR. PROST: Object to form; outside the scope.
A. Time and date. I'm sorry. I'm just trying to familiarize myself with this, so . . .
Q. (By Ms. Scott) Sure. Time and date silo began drilling, time and date silo finished drilling.
A. Right.

Page 445

Q. So that's about -- call it four or five days, right?
MR. PROST: Object; outside the scope. Just so I'm clear, the procedure is from 1987. That's why I keep saying "outside the scope," but --
MS. SCOTT: I see.
MR. PROST: -- I just don't know, and I want it to be clear on the record.
A. Your question was?
Q. (By Ms. Scott) Do you think that four or five days is the time that it might likely take to fill a silo?
A. This example uses about four days.
Q. Okay. And so can we agree that a silo is not a small container?
A. What do you mean by "small"?
Q. Well, I mean, if we're holding four days' worth of daily composite, can we agree that it's a larger container?
A. Larger than a container?
Q. A large container.
MR. PROST: Object to form.
A. Now you're using "large" instead of "small." It's a silo. Silos are usually pretty big bins.

Page 446

Q. (By Ms. Scott) Okay. And then, from that, a 4-ounce microbe cut is sent for x-ray diffraction in step number 4; do you see that?
MR. PROST: Objection.
A. That's what it says.
Q. (By Ms. Scott) Okay. So is it fair to say that based on this SOP that 4 ounces of the silo that at least in the exemplar case was filled over the course of about four days, that 4 ounces is sent for testing?
MR. PROST: Objection.
A. That's what it appears to say, yes.
Q. (By Ms. Scott) And I'm not going to ask you about any of the testing, but it's a sample that is tested for arsenic, heavy metals, asbestos, those types of things, right?
MR. PROST: Objection.
A. It said that the silo composite was tested for moisture, insol, magnesium carbonate, bulk density, arsenic, heavy metals and water-soluble iron.
Q. (By Ms. Scott) And, again, what is your estimate of the number of types of ore that a silo could hold?
A. I didn't give an estimate.

Page 447

Q. What is your estimate?
A. I don't have one. I don't know what the density of the material was. I don't know what the diameter or the height is. I can't give you an estimate.
Q. Did you review any documents in preparation for your deposition to testify on sampling that discuss the amount that a silo from which samples can be taken can hold?
MR. PROST: Object to form.
A. If that was included in some of the documents reviewed, I don't recall that at this time.
Q. (By Ms. Scott) Can we agree that 4 ounces is a very small amount compared to the amount of material that would have been contained in the silo?
A. In this case, 4 ounces represented a -- 4 ounces was a composite that represented the material that was in the silo.
Q. And my question was, can we agree that 4 ounces is a very small amount compared to the large amount that you expect would be contained within the silo?
MR. PROST: Objection.

Page 448

A. It's a 4-ounce sample that was representative of what was there. And I agree that it's a small amount compared to what was in the silo.
(Exhibit 52 was marked for identification.)
Q. (By Ms. Scott) I'm going to hand you what's been marked as Exhibit 2 -- 52. Sorry.
And Mr. Downey, we see here that this is a laboratory standard test method for Imerys talc North America for loose bulk density, and it's dated August 18, 2011; do you see that?
A. Yes.
Q. Have you seen this document before?
A. I believe I have.
Q. Okay. Tell me, why is -- why was it important to have a standard test method for loose bulk density?
MR. PROST: And I just wanted to say I think this probably falls within Julie Pier's category, but I just object on that basis. But subject to that, go ahead.
MS. SCOTT: Sure.
MR. PROST: And object to form. All right. Go ahead.
A. Ask again, please.

Page 449

Q. (By Ms. Scott) Okay. Strike that.
Let me ask you this: It says, "This test method is used to determine the bulk density of loose dry powders using the Scott Volumeter," correct?
A. Yes.
Q. What is a Scott volumeter?
A. It's a device that allows you to test the loose bulk density by essentially creating a free flow of material into a one-inch cube.
(Exhibit 53 was marked for identification.)
Q. (By Ms. Scott) Mr. Downey, I'm going to hand you what's been marked as Exhibit 53 to your deposition.
A. Do you have a paper clip? I just don't want it to get lost.
Q. I'll see if I can put an exhibit sticker on the one that is. Oh, look at that. How about that? There might be duplicate copies here. In any case, here you go.
Mr. Downey, we see here that this is a 1992 document from Cyprus Windsor Minerals Corporation, dated May 11, 1992, to the validation team members from M.J. Keener; do you see that?
A. Yes.

Page 450

Q. Who is M.J. Keener?
A. He was shown below in the document. He was the QA manager.
Q. Okay. And the subject is "Phase 2 - Validation Protocol," correct?
A. That's what it says.
Q. Do you know whose -- happen to know whose handwriting that might be, whose signature that is in the top right-hand corner of this document?
A. No.
Q. So turn to page 2 of this document for me. Under "Description of Process," it describes the flotation process; do you see that?
A. Yes.
Q. And at the top, we see that this is the "Cyprus Windsor Minerals Cosmetic Talc Process Validation Protocol," correct?
A. Yes.
Q. So here we see the flotation process described that the ore from the open-pit mines is trucked to Chester, Vermont, where it's crushed in a jaw crusher and stored in a 60-ton bin before being transported to West Windsor, and there it is dumped in an ore shed or stored in a stockpile; did

Page 451

I read -- did I summarize that correctly?
MR. PROST: Object to form.
A. You breezed through that pretty quick, but that's the general essence of it.
Q. (By Ms. Scott) Okay. And would all 60 tons of that ore be stockpiled in one single bin?
MR. PROST: Object to form; outside the scope.
A. Other than what's written here, I don't know how I can answer your question.
Q. (By Ms. Scott) Turn to the page with Bates numbers, the last two numbers, 82.
A. I'm sorry. What was your instruction?
Q. Turn to the page, last two numbers 82. And at the bottom, we see "Validation Requirements"; do you see that?
A. Yes.
Q. "The process systems will be considered validated when the following requirements have been met."
MR. PROST: Outside the scope.
Q. (By Ms. Scott) Did I read that correctly? Actually, it says, "have been meet," but I think they meant "have been met."
A. Oh, yes.

Page 452

Q. And do you have any idea of what "validated" means in this context?
MR. PROST: Object to form.
A. Process validation.
Q. (By Ms. Scott) And what does that mean?
A. Generally speaking, you're validating that the process is in control.
Q. And if we turn to the next page, one of those requirements for validation in number 3 is that "There will be no negative impact on production costs with the system as defined or with any alterations to the system which are deemed necessary to properly control the product," correct?
MR. PROST: Object to form.
A. That's what it says. You're taking one section. I don't know what it means, but . . .
Q. (By Ms. Scott) Okay. Well, is it fair to say from this section that for the process to be validated, it had to not cost more money?
MR. PROST: Object to form.
A. I don't know. It's a multi-page document. That section says what it says. I don't know how to interpret it unless we spend time on the document.

Page 453

Q. (By Ms. Scott) Turn to the last two pages marked 88. On this page, we see -- at the top, it says "Cyprus West Windsor," correct?
A. Yes.
Q. And in the bottom right-hand corner, it says, "West Windsor Mill flowchart," correct?
A. Yes.
Q. And on the top left-hand area, we see 25-ton ore storage.
Do you know what that is, what that 25-ton ore storage is?
MR. PROST: Object to form. Talking about hundred ton?
Q. (By Ms. Scott) 2500 ton storage?
MR. PROST: I think you said 25. That's all.
A. That's where they store the ore prior to feeding the plant.
Q. (By Ms. Scott) Okay. And then if we look farther along onto the right, we see some silos there; do you see those?
A. Oh, yes.
Q. Okay. And silos 1 through 6 are grade 66; do you see that?
A. Yes.

Page 454

Q. Okay. And how many tons does it say inside each of those boxes?
A. 325 tons.
Q. Based on this, is it fair to say that the silos we were talking about earlier from which a 4-ounce sample was taken for testing contained approximately 325 tons?
MR. PROST: Object to form.
A. That's what the size that's indicated on these.
Q. (By Ms. Scott) So the answer's "yes"?
MR. PROST: Just object to form as it relates to the prior document; foundation.
Q. (By Ms. Scott) Is the answer "yes"?
A. Ask the question again, or read it back.
Q. Sure. Based on this document showing that there are 325 tons for grade 66 talc in each of the silos, and we saw a document earlier that showed that a 4-ounce sample was taken from a silo for testing for arsenic and heavy metals.
MR. PROST: Object to form.
A. Four ounces of a representative sample was taken for analysis.
Q. (By Ms. Scott) Four ounces from the silo was taken for analysis, correct?

Page 455

A. No.
Q. Okay.
(Exhibit 54 was marked for identification.)
Q. (By Ms. Scott) Mr. Downey, I'm going to hand you what's been marked as Exhibit 54 to your deposition.
This is a 1978 document with the subject "Reducing the Number of Ore Samples Collected for Analysis by McCrone Associates"; did I read that correctly?
A. Yes. This was about ten or eleven years before Cyprus purchased Windsor Minerals.
Q. Who is McCrone Associates?
MR. PROST: Object; outside the scope.
A. What's that?
Q. (By Ms. Scott) Who is McCrone Associates?
A. They're an analytical lab.
Q. In the first paragraph, we see that a summary of the analyses for asbestiform minerals and Windsor Minerals ore samples was reported on January 14, 1975, concerning a six-month ore study on asbestiform content. "This report stated that with 'greater than 99.9 percent certainty, ores and materials produced from the ores at all Windsor

Page 456

Minerals locations are free from asbestos or asbestiform material.' The ore samples analyzed were composites representing all materials processed in the plants of Windsor Minerals from June 3, 1974, to December 6, 1974."

And then in the next paragraph, it covers mid-1975 to May 1978. "We reduced the number of samples in mid-1975 by taking biweekly composite ore samples; occasionally weekly composites are collected. Biweekly composites consist of 20 to 45 5-gram ground ore samples, the exact number depending on the shift schedule in the mills."

Then it goes down on to say that weekly -- biweekly composites were analyzed, and it goes through a number of results from those analyses; do you see that?

MR. PROST: Object to form.

MR. SILVER: I'm about to place an objection as to scope, and I'm just waiting for a question other than "Do you see that" before I instruct the witness whether to answer or not.

MS. SCOTT: Sure. My question's actually on page 2.

A. I was still way on page 1. You're on page 2? Where you at?

Page 457

Q. (By Ms. Scott) What I'm going to ask you about is at the top of page 2.

MR. SILVER: I'll instruct the witness to listen to the question but to wait for instruction from counsel before answering.

Q. (By Ms. Scott) Are you ready for my question?

A. Do you want me to read anything in particular or are you going to read something?

Q. In the top of page 2, the heading is "Tracing Samples to Source." It reads, "In using a biweekly system of sample collection, we can with 99 percent accuracy trace samples to their source at the Hammondsville Mine, and could continue to trace samples to their source with a similar accuracy if sampling was done on a triweekly or a monthly composite basis"; did I read that correctly?

MR. PROST: Objection. Can I just have a continuing objection to any questions relating to this document? It's clearly not related, and outside the scope.

A. Your question was, did you read it correctly?

Q. (By Ms. Scott) My question was, did I

Page 458

read it correctly?

MR. SILVER: The witness can answer that question.

A. You read it correctly.

Q. (By Ms. Scott) Have you seen this document before?

A. No. It's not an Imerys document.

Q. Have you ever had any conversations with anyone about the reduction of sampling at Windsor?

MR. PROST: Object to form.

A. This occurred a year before Cyprus purchased Windsor Minerals, and no, I have not discussed this subject with anyone. This is a J&J document. I've never seen it before.

MR. PROST: It might be off year to year.

THE WITNESS: Pardon? What did I say?

MR. PROST: A year before.

THE WITNESS: A year? Oh, sorry. Ten years. It's 1978. Late 1978. And the acquisition was early 1989. So a little more than ten years.

Q. (By Ms. Scott) Okay. You can put that away.

THE WITNESS: Thank you for the correction.

(Exhibit 55 was marked for identification.)

Q. (By Ms. Scott) Mr. Downey, you've been

Page 459

handed what's been marked as Exhibit 55 to your deposition. This is an October 5th, 1988, "Due Diligence of Windsor Minerals Quality Control Program"; did I read that correctly?

MR. PROST: Objection; outside the scope.

A. Yes.

Q. (By Ms. Scott) I want you to look at the bottom under "West Windsor Operations"; do you see that, under section 2?

A. Yes.

Q. We see "Turnover in the lab has been relatively high in recent years to the relatively 'fixed' routine. The three full-time lab people have a total combined service history of two and a half years. Each new lab employee must be trained, certified in all of the required tests before they can work a solo shift. Vermont's soaring real estate prices combined with its low unemployment skills [sic] makes it difficult to recruit skilled or some skilled technical personnel."

MR. PROST: Objection.

Q. (By Ms. Scott) Did I read that correctly?

A. No.

Q. What did I get wrong?

Page 460

A. I think you said "skills" instead of "level."
Q. So is it fair to say that we see here that West Windsor is having difficulty hiring and maintaining skilled and some skilled personnel?
MR. PROST: Objection.
A. That's what's said there, but it also indicates that the overall quality program was judged to be excellent.
Q. (By Ms. Scott) If you look under "Columbia Mill" on the second page of this document, we see in this paragraph, "In addition to supporting the QC requirements of the Columbia Mill and Shipping Center, this lab also runs ore samples for mine control and arsenic samples for West Windsor. During the third shift and weekends" --
A. Hang on. Are you -- what Bates number?
Q. I'm under "Columbia Mill." I'm on the second page of the document.
A. So Bates 90?
Q. Bates 90. It's the first heading at the top.
A. Oh, I was down at the bottom. There's another Columbia --
Q. Oh, you're getting ahead of me. Okay.

Page 461

A. Okay.
Q. So let me just have you take a look at that paragraph that starts with "In addition to supporting the QC requirements," and I'm going to continue by reading that last sentence.
"During the third shift and weekends, the shift foreman is required to perform the laboratory testing"; did I read that correctly?
A. That's what it says.
Q. And under "Laboratory Equipment" and "West Windsor Operations," it reads "...requires on-site capabilities for conducting the following test." And in that list of things, we see number 8 is "Arsenic" and number 9 is "Heavy Metals," correct?
MR. PROST: Objection.
A. It says "Arsenic - Wet" and "Heavy Metals - Wet Method."
Q. (By Ms. Scott) Now, Mr. Downey, based on your reading of the document, is it fair to say that the quality control people with a combined two and a half years of experience that are -- they're having a problem maintaining are the ones conducting these tests in 1988?
MR. PROST: Object to form, and outside the scope.

Page 462

A. (Document reviewed.) Can -- or have it read back, please. Your question was, were these -- were the lab technicians the one running those tests?
Q. (By Ms. Scott) Right. We see that the --
A. Yes, they were the ones.
Q. Right. The turnover in the lab has been high. And so my question was, is it fair to say that the quality control people that have a combined two and a half years of experience that are subject to high turnover are the ones conducting these tests in 1989?
MR. PROST: Objection to form.
A. Yes. It also indicates that the -- each new lab employee is trained and certified in all of the required steps before they work a solo shift.
Q. (By Ms. Scott) Turn to the page marked 92 for me, please, sir, last two digits, 92. Under the last paragraph that's headed "West Windsor," do you see that just before the signature? It reads, "If during the production of product number 66, the color, density or in-sols dip below spec, the product becomes number 96 (export grade)"; did I read that correctly?
A. Yes.
Q. Where -- what happens to 96?
MR. PROST: Object to form.
A. What do you mean what happens to it?
Q. (By Ms. Scott) Is it used in cosmetic grade in any form?
MR. PROST: Same objection.
A. My understanding is that it was sold as an export product.
Q. (By Ms. Scott) And exported to where?
MR. PROST: Objection to form.
A. Outside the U.S. I don't know all of the locations.
(Exhibit 56 was marked for identification.)
Q. (By Ms. Scott) Exhibit 56. Mr. Downey, this is a "Ludlow Mill, West Windsor Mill, Argonaut Mine Assurance Monitoring Program for Asbestos Mineralogy," dated April 2nd, 2001; do you see that?
A. Yes.
Q. In the first paragraph it reads, "Argonaut Mine Feed to West Windsor Mill is sampled monthly for asbestos analysis. Each monthly sample is a composite sample consisting of an aggregate of

Page 463

Page 464

daily samples (three- to eight-hour samples from an automatic sampler) of Roller Mill feed to the plantation circuit (whole ore samples) -- "(whole ore samples)," correct?
A. That's what it says.
Q. What is an auto sampler?
A. An auto sampler?
Q. Mm-hmm.
A. It's a device that automatically takes samples.
Q. From where? From what part in the process?
A. Wherever it's located.
Q. So it can be anywhere within the mine?
A. This isn't at the mine.
Q. I'm sorry. Anywhere in the processing?
A. It needs to be located in a place where you can actually grab a sample, or where -- sorry, it can automatically collect samples.
Q. In the middle of the page, it reads, "Out of hundreds of such samples, on one occasion, Bain reported detection of chrysotile fibers in a Windsor Feed sample. A retest, on a duplicate, sealed sample, failed to confirm the finding"; do you see that?

Page 465

A. Yes.
Q. How is retested material gathered from the composite?
A. I don't know what you mean.
Q. Well, this material was retested, the material that -- the sample that originally detected chrysotile was resampled, correct? Or retested. Sorry.
A. No. It says that the retest was on a duplicate sealed sample.
Q. Okay. If made up of a composite, composite is not from the -- strike that.
Can Imerys ever have assurance that a retested sample will be identical to the original sample based on the variability that is naturally occurring within the mines?
MR. PROST: Object to form.
A. I don't know if I follow your question.
Q. (By Ms. Scott) Every composite sample will inevitably be different, correct?
A. I don't think I could agree to that. That seems like an overstatement.
Q. Okay. Let me go the other way, then.
Can you agree that no two composite samples will be identical?

Page 466

MR. PROST: Object to form.
A. For what parameters?
Q. (By Ms. Scott) Well, in this situation, it's for the detection of chrysotile. It was found in one composite sample and then a different composite sample was tested and didn't find it.
How do we know that those two samples were identical?
MR. PROST: Object to form.
A. The composite sample was collected from an automatic sampler that -- typically, the way an automatic sampler works is that on a regular time frequency, the sampler is programmed to gather a stream of the material that is being processed at that time and collected so that you are getting an unbiased representative sample over the entire period of production. And then, as we've seen in the other standard operating procedures, that the composite samples are then well-mixed before the other samples are extracted from them.
Q. (By Ms. Scott) My question is a little more elementary than that.
And it is, what guarantee does Imerys have that each sample taken from a composite will be near enough in composition that you can make

Page 467

determinations about the whole based on a retest of the second sample?
MR. PROST: Objection to form.
A. I think that you are -- have gone into an area that is in the expertise of Julie Pier. That's the repeatability aspect and how it affects detection limits and things like that, so I would defer that to -- question to her.
(Exhibit 57 was marked for identification.)
Q. Exhibit 57. Mr. Downey, Exhibit 57 is A Plant Operations Manual for Luzenac America West Windsor Vermont, dated 3/30/98; do you see that?
A. Yes.
Q. And PO 8.2 in the middle of the first page, we see "Procedures for Sampling Crude Ore"; do you see that?
A. Yes.
Q. Okay. Have you seen this document before?
A. No.
Q. If you'll turn to page marked, last two digits, 26.
A. 606026?
Q. That's right. We see that these are the procedures for in-process microbial sampling for

Page 468

grade 66 product, right?
A. Yes.
Q. Okay. Why would Imerys do microbial sampling? What was the purpose of doing microbial sampling?
A. Because the product needs to be essentially sterile for its use. That was a requirement from Johnson & Johnson.
Q. If we look on the page, last two digits, 27, under 8.4.4 under "Float Feed (Post roller milled)" -- do you see that, the penultimate paragraph there?
A. I see it there.
Q. And Section 8.4.4.1 shows that three samples per week on different days are taken from eight-hour composite bags of float feed as collected by the auto sampler.
What is a -- describe the eight-hour composite bags. How does that get filled?
A. How does it get filled?
Q. Mm-hmm.
A. I don't know if it's described elsewhere in another SOP. This seems to be like an overarching document, but generally, from what I can read from this, the -- an auto sampler was

Page 469

taking samples over the eight-hour period for a shift.
Q. And placing it into bags from which samples would later be taken?
A. I think that's what this says.
Q. Okay. And then turn to page 3 -- the last two digits, 31, so 60631, for me. Under "PO 8.7 Testing and Clearance," we see that "Shipment samples are required to meet finished product specifications as documented in PO 3.0, Finished Product Specifications, and tested according to test procedure as documented in PO 4.0, Test Procedures and Equipment."
In 8.7.2, just below that, we see instructions on what would happen if something is out of spec; would you agree that assessment?
A. Can I read it?
Q. Mm-hmm.
A. (Document reviewed.) Okay. What's your question?
Q. Okay. So it says, (as read:) If the initial shipment auto or probe composite sample for a load is tested and is found to be out-of-spec, then a second round of samples shall be taken from bulk bag or pallet number 1, 3, 5, 7, 9, 11, 13,

Page 470

15, 17, 19, and 21. These samples will be combined into one composite sample.
My question is, sir, what is the point of taking from the odd-number bulk bags or pallets if the initial sample is found to be out of spec?
A. I don't know how -- what this has to do with grade 66, because that was in silos and shipped in bulk, so this doesn't even seem to be relevant.
Q. You don't believe that this has to do with samples that are out of spec that are eventually going to be potentially used for cosmetic-grade talc?
A. I can't tell what type of product that's even indicating. West Windsor did produce other products besides cosmetic talc.
Q. Okay. If this is cosmetic-grade talc, you are here to testify about sampling, what would be the wisdom behind taking from the odd number of bulk bags or pallet numbers to resample an initial out-of-spec finding?
MR. PROST: Object to form.
A. The product for Johnson & Johnson was stored in silos and shipped in bulk railcars. This doesn't relate to products shipped in bulk. I

Page 471

can't tell if this applies to cosmetic grade, so I don't think I can even begin with the suggestion that you made. And I don't know what the other sampling protocol would have been for the bagged and palletized-type product, so I don't have enough information to answer your question.
Q. (By Ms. Scott) In sampling cosmetic-grade talc, if an initial sample was found to be out of spec, did Imerys have a practice of taking a second round of samples from odd numbers of composite samples for retest?
A. Generally speaking, if a product was out of specification, there's typically a retest procedure before just discarding the product as out of spec. It was tested again.
Q. Okay. And with cosmetic-grade talc, if the retest also found the sample to be out of spec, what happened then?
A. Then it would be rejected.
Q. Okay. Take a look at Section 8.7.3 here. It says, "Should the second round of sampling fail to meet proper specifications, the order will be rejected and not shipped."
That's what you're saying, right?
A. I think that's what I just said. Yes,

Page 472

ma'am.
Q. Okay. But in 8.7.4, it says, "Additional samples will be taken to determine if any portion of a bag or bulk shipment can be released for shipment"; did I read that correctly?
MR. PROST: Object to form.
A. That's what it said.
Q. (By Ms. Scott) So is this a situation where we've taken one sample, it's out of spec, a second sample is taken, it's out of spec, but Imerys is going back and finding if anything within that bulk shipment can be usable after two out-of-spec findings?
MR. PROST: Object to form.
A. One thing that can happen is that there are various specifications for various products. And it might not meet the specification for the product that it was intended to be manufactured for, but it -- there is potential that it could meet the specification of a -- let's say an industrial-grade product. And in that case, that could happen.
Q. That's not what it says, though, is it?
MR. PROST: Object to form.
Q. (By Ms. Scott) It just says, "If any

Page 473

portion of the bag or bulk shipment can be released for shipment," right? It doesn't say, "released for other purposes."
A. But "released for shipment" could be for another purpose.
Q. Okay. What is the point of a representative sample if we're going to go beyond two out-of-spec findings to try to use some of the shipment? Isn't Imerys bypassing the representative sample system through this protocol?
MR. PROST: Object to form.
A. I don't know I'd agree with that.
Q. (By Ms. Scott) Do you think that this system would be appropriate if applied to cosmetic talc?
MR. PROST: Object to form.
A. I think it would depend on the particular specification that the material was out of spec for.
Q. (By Ms. Scott) Let me ask it a different way.
If cosmetic talc was found to be out of spec not once, but twice, do you believe that it would be appropriate for Imerys to research and resample the bulk shipment to determine whether any of that

Page 474

could be used for cosmetic-grade talc if the finding, the out-of-spec finding, was arsenic?
MR. PROST: Object to form.
A. Generally speaking, I would think arsenic, probably not. The example I was thinking was if it was color or some other parameter that was out of spec, and maybe the customer could approve a deviation from the specification, and that can happen.
(Exhibit 58 was marked for identification.)
Q. (By Ms. Scott) I'm going to hand you Exhibit 58.
Mr. Downey, Exhibit 58 is a standard operating procedure, dated June 10, 1987, and it's -- the procedure is "Frequency of Analysis - Cosmetic"; do you see that?
A. Yes.
Q. And here we see in the third paragraph down that "The two hour cosmetic testing and the testing of the float feed and ore satisfies the need of the mill to monitor its production in order to insure that they are making a quality product"; did I read that correctly?
A. That's what it says.
Q. Okay. And describe the two-hour

Page 475

cosmetic testing described here, if you will.
MR. PROST: Object to form; outside the scope.
A. This is a Windsor Minerals document. It predates the acquisition by Cyprus. The two-hour cosmetic testing that's referenced here I would expect is described in a different SOP.
Q. (By Ms. Scott) If you turn to page 2 of the document for me, and number 16, and just so we know what we're talking about, we're talking about the schedule, the frequency of analysis schedule, for cosmetic talc, right?
A. Yes.
Q. Okay. And so this is a list of different minerals that are being tested on various schedule. And in number 16, we see asbestos, right?
A. It's not just minerals that are being tested, but . . .
Q. You're right. Various tests are being performed, right?
A. Yes.
Q. Okay. And in number 16, it discusses the samples that are sent to outside labs for testing?

Page 476

A. Yes.
Q. Right?
And these are asbestos samples. And for x-ray diffraction, it says, every "Two silos on a composite sample made from the two-silo retainers," correct?
MR. PROST: Object to form.
A. That's what it says.
Q. (By Ms. Scott) Okay. So what's a silo retainer?
A. That's the retainer of the silo composite sample is what I would interpret that to mean.
Q. Do you know how large a silo retainer is?
A. It might be described in the other documents on how much material was in the composite sample.
Q. I've seen reference to it, and we'll get to it in a minute, but -- of baggies, 5-by-8 baggies being the retainer sample.
Does that sound about right?
A. I think the documents would tell us. I -- I don't recall.
Q. Okay. Have you had experience with

Page 477

seeing retainer samples?
A. Not at Windsor.
Q. So whatever that amount is, that amount is going to be a smaller amount taken from two different silos in a composite silo made from two different silos, right?
A. What's going to be a smaller amount? I'm not sure what you're saying.
Q. Sure.
So if we look at -- under 16, "X-Ray Diffraction," it says, "Every two silos on a composite sample made from the two-silo retainers," right?
A. That's what it says.
Q. Right. And we know from other documents that, at least in one document, a silo was referenced as being 325 tons; do you remember that?
A. Yes.
Q. Okay. And we know that a retainer is a smaller portion of that, much smaller portion of that; would you agree?
A. Yes, in general, samples are smaller than the whole.
Q. Exactly.
And this sample is going to be made of the

Page 478

two much-smaller samples from the two silos, correct?
MR. PROST: Object to form.
A. Yes.
Q. (By Ms. Scott) Okay. Do you have any understanding as to why each silo was not sampled for asbestos?
MR. PROST: Object to form.
A. They were on a composite basis. They weren't sampled individually. They were sampled as a composite.
Q. (By Ms. Scott) And would you agree that the traceability of a finding of asbestos would be easier if each silo was sampled individually versus sampled as a composite?
MR. PROST: Object to form; outside the scope.
A. I'm trying to follow the logic of your question and see -- can you have it read back?
MR. PROST: No.
THE REPORTER: I lost the feed. Sorry.
MS. SCOTT: That's okay. I think I can come up with it.
Q. (By Ms. Scott) Would you agree that the traceability of a finding of asbestos would be much

Page 479

easier if a sample was taken from an individual silo versus on a composite basis?
MR. PROST: Object.
A. Not necessarily.
Q. (By Ms. Scott) Explain why not. We're talking about a discrete silo with one group of product in it versus a combination of two different silos with material in it. You can't pinpoint the exact silo if you have an asbestos finding, can you?
MR. PROST: Object to form; outside the scope.
A. Well, we're still talking hypothetical about a finding, but if the procedure was to reject and discard both silos, you have enough traceability to reject them both if the composite comes back positive in that hypothetical.
MR. SILVER: Can I make a suggestion that whenever you're moving onto the next topic that we take a quick break, one, to let the court reporter fix the real-time, and two, we can just --
VIDEOGRAPHER: Going off the record at 5:37.
(Recess taken.)
VIDEOGRAPHER: We're back on the record at 5:52.

Page 480

Q. (By Ms. Scott) Okay. Mr. Downey, we were talking before the break about Exhibit 58, which is the frequency of analysis cosmetic SOP from 1987. Do you remember that?
On page 2 of this document, number 13, it says, "Arsenic - See arsenic SOP"; do you see that?
A. Yes.
Q. Okay. I'm going to hand you the arsenic SOP. I'm sorry. It's been marked as Exhibit 59.
(Exhibit 59 was marked for identification.)
Q. (By Ms. Scott) Mr. Downey, have you seen this document before?
A. I think so.
Q. What would be the purpose of having a separate -- well, strike that.
Does Imerys have, today, a separate arsenic-testing SOP?
A. I don't recall.
Q. Do you recall ever in the time of your employment at Imerys that -- whether it had a separate arsenic-testing SOP?
A. I lost the first part of your question.
Q. Do you recall there ever being, since -- since 1988, since your time at Imerys, have you ever seen a separate arsenic-testing SOP? Do you

Page 481

have any knowledge as to whether it existed since 1988?
A. I don't know, but I know that arsenic was part of the specification for grade 66, and it was -- would have been continued to be tested for.
Q. We talked a little bit about the automatic sampler earlier. And I want to direct your attention back to Exhibit 53, and specifically the chart that we looked at on Exhibit 53.
A. The flowchart on the back?
Q. That's correct. Can you look at this flowchart and tell me where an automatic sampler might be located?
A. (Document reviewed.) Do you have a magnifying finding glass?
Q. I don't.
A. A lot of the text is illegible.
(Document reviewed.)
Q. Found any yet?
A. I found "product sampling" something in the lower right area, but I can't -- I can't tell what the other word is.
Q. Where, specifically, are you looking?
A. Above "Flash dryer number 1."
Q. I think that says "Product sampling

Page 482

plate."
A. Your eyes are better than mine.
Q. I'm not sure, but that's what I see.
Would that be -- considering what is around that, would that be an appropriate place for an auto sampler?
A. It says "Product sampling" something.
Q. Okay. Well, let me ask you this: At West Windsor, the product was ground to a mesh and went through -- and was pushed through the mesh, correct? The product was ground and went through the mesh, a mesh process, and -- in the processing?
A. No.
Q. There was no mesh involved in --
A. There's a mesh involved in the test method, but not --
Q. Okay. I'm sorry.
In the test method, yes, the product was pushed through or floated through a mesh, correct?
A. In the test method --
Q. Yes.
A. -- to measure the grind?
Q. Yes.
A. It was -- I don't recall if it was a wet-screen or a dry-screen method.

Page 483

Q. Okay. But some of the product fell below the mesh.
Is it fair to say that there was some product that couldn't quite make it through the mesh that remained on top?
A. Yes. My recollection is the specification was, like, 98 or maybe 98.5 percent passing a 200-mesh screen.
Q. The product that remained on top, was that tested?
A. What do you mean "tested"?
Q. Was it sampled?
A. Yeah, it was sampled. Wait. It was part of the sample.
Q. Okay. Was any of that product that remained on top -- did that make it into a sample that went to testing?
A. Yes.
Q. The grains that did not make it through the mesh?
A. Oh, those specific grains?
Q. Those specific grains that did not make it through the mesh.
A. Well, what the mesh test is about is to test the particle size distribution of what is

Page 484

being produced from the roller mill. All right? The roller mill is a large-diameter chamber with a steel ring on the inside of the barrel. And then it has what we call a spider on which hangs roll journals. And what happens is that the main drive of the mill spins the spider, and by centrifugal force, it pushes the rolls out against the bull ring.

Q. Okay.

A. All right? And that's where the talc is being pulverized. But the grind is being controlled by the airflow and the whizzer that's spinning at the top. And so you're getting a particle-size distribution that's coming out, and that particle-size distribution needed to meet the specification of 98 or 98.5 percent passing through a 200 mesh, but the entire sample is what was analyzed.

Q. So it's your testimony that not only that that passed through the 200 mesh, but the larger particles that did not pass through the 200 mesh were sampled? Were tested? I'm sorry.

A. They were tested in the other test methods. So the 200-mesh screen analysis, you take from your production sampling -- you take enough

Page 485

material from that sample to do the analysis for the sift testing. You take another portion of that material to do the analysis for the brightness.

So you're taking an overall sample from the production, and then you're taking parts of that sample to do the specific test methods. You can't -- because these test methods are, to a certain degree, somewhat destructive, you can't reconstitute the sample again from the -- it's been a long day -- from the remnants of a different test method then go take it and do something else with it.

Q. I understand that, but I just want to make sure I'm clear, that the test that you just talked about, that, I understand, and I know that that is on the particles that pass through the 200 mesh.

What I'm asking about is specifically those particles that do not. What happens to those, and are those tested?

A. Those are tested as part of the 200-mesh test method, because those are taken from the screen and weighed so that you can calculate the fraction of minus 200 and the fraction of plus 200.

Q. Do they undergo any other types of

Page 486

testing, like the brightness testing and the other testing that the particles that pass through the 200 mesh undergo?

A. There's not enough remaining material to be able to do any other testing with it. But, again, the particle size in that fraction is tested in other test methods from the same master sample. The analytical samples are used for that. So yes, the particles that are representative of the plus-200-mesh fraction are indeed tested with the other test methods.

Q. Okay. Let's talk about the various mines and what types of samples were taken and what samples were taken at the various mines.

What was taken -- what types of samples were taken at the Hammondsville Mine?

A. Hammondsville was underground. There were drill cores. There were drill-core samples. You mean at the mine or throughout the process?

Q. At the mine.

A. At the mine. Other than drill cores, I haven't seen records, but typically, there would be samples taken by the geologist or a helper at the mining phase, or we call it the dig phase.

MS. O'DELL: Could you -- the what phase?

Page 487

THE WITNESS: "Dig."

MS. O'DELL: Thank you.

Q. (By Ms. Scott) And what about the Hamm Mine?

A. Hamm was open pit, so there were drill cores and in-fill drilling, blast-drawn samples that were taken, and it's common practice to take samples of -- at the face.

Q. At the face?

A. Mm-hmm.

Q. What about Argonaut?

A. That'd be the same.

Q. The same as Hamm?

A. Yes.

Q. In-fill blast, drill core and at the face?

A. Well, yeah, drill core, in-fill drilling, blast and in the face.

Q. I've kind of written down what you said. Is that pretty accurate? I can hand it to you if you like. Might be easier.

A. Please.

(Document reviewed.) There might be other at Hammondsville. I'm just not aware. I didn't see much information on Hammondsville. And the

Page 488

samples at the face are likely just to be intermittent.
MS. SCOTT: I'm going to mark this 60.
(Exhibit 60 was marked for identification.)
Q. (By Ms. Scott) We talked a little bit earlier about in-process sampling.
A. In?
Q. In-process.
A. In-process.
Q. Yes, uh-huh. And that differs from sampling at the mine in what way? Explain to the jury how that differs.
A. In what way?
Q. In what way does that differ from sampling at the mine? This is Exhibit 61 to your deposition.
(Exhibit 61 was marked for identification.)
A. Generally speaking, in-process sampling is when the material is at the milling or manufacturing location, and during the production process at various stages, it can be sampled in the process of being manufactured. So that's what "in-process" refers to.
Q. Okay. And if you will take a look at what's been marked as Exhibit 1 [sic] to your

Page 489

deposition, this, unfortunately, is undated.
Have you seen this document before?
A. I don't recall. I don't know.
Q. Okay. And I think --
MR. SILVER: Did you say Exhibit 1? You said turning to Exhibit 1. You didn't mean --
MS. SCOTT: Of 61. Yeah. Sorry.
MR. SILVER: Okay.
Q. (By Ms. Scott) You don't know if you've seen it before?
A. I don't recall.
Q. Okay. Just by taking a look at the document, is there any way to determine the date of this -- the range of dates where this in-process sampling procedure might be in place? It may not be, but, you know, just --
A. Based on the header?
Q. Based on the document itself.
A. Right.
Q. The content of the document itself, yes.
A. It's got a Luzenac letterhead, so that is post 1992.
Q. Okay. Fair enough.
Okay. And if we look on the front of the first page of the document, we see "Sampler

Page 490

locations" under "Procedure"; do you see that?
A. Yes.
Q. And see sample number S-1, there's a float feet auto-sampler?
A. Yes.
Q. And "Sample is collected at the auto sampler in front of the conditioner tank"; did I read that correctly?
A. Yes.
Q. And that -- the type of that is an eight-hour composition and grab sample, right?
A. That's what this says.
Q. And so when we were looking at that chart just a minute ago, is this -- if you saw the condition or tank on that chart with the very small writing, is this a place that you would expect to see an auto-sampler at the float feed?
A. What this says is that's where it was.
Q. Right. And is that -- has that been common practice for Imerys to have an auto-sampler at the float feed?
A. I believe so, yeah.
Q. The sample S-2, we see "ACM Auto-Sampler." What is ACM?
A. That stands for air classifier mill.

Page 491

Q. And sample S-3, "FK4," what is "FK4"?
A. I would only be speculating.
Q. On page 3, for sample 18, we see that it's -- the sample description is "Ore" and the type is "Grab"; do you see that?
A. Yes.
Q. It says, "Sample is collected after passing through the crusher on the belt leading to the dryer," right?
A. Yes.
Q. And "This sample is to be a representative sample of all the ore in that a proportional amount of stones and fines should be collected"; did I read that correctly?
A. Yes.
Q. Okay. How -- describe this process to me. Describe the determination of whether this is representative based on this information.
A. Well, this specific sample, if you continue reading, it says, "This will allow a more representative moisture analysis." And they would take two pounds of the sample. So this is to monitor the moisture level being fed to the dryer to help the operator control the set points on the dryer so that the ore is dried to the right level

Page 492

before being fed to the roller mill.
Q. Okay. And is there any way of determining -- strike that.
Generally, when we're looking at an ore sample in this type of in-process sampling, what volume of ore are we talking about?
A. I'm not sure what you mean by "what volume of ore."
Q. Well, this is a sample description of ore. And I'm trying to figure out what volume of ore, because then we -- you know, when we look at the method, we know that two pounds of the sample is taken, so I'm trying to figure out two pounds of what?
A. Two pounds of the ore being fed to the plant is taken, but the purpose of this particular sample is only to measure the amount of moisture in the ore that's being fed to the plant.
Q. Mr. Downey, I'm going to hand you what's been marked as Exhibit 62 to your deposition.
(Exhibit 62 was marked for identification.)
Q. (By Ms. Scott) These are sample procedures for Chinese crude ore; do you see that?
A. Yes.
Q. Okay. And in the introduction, it says,

Page 493

"This procedure details how to collect samples of Chinese number 1 and Chinese number 2 crude ore, how to crush and conduct level tests on the samples, and, finally, the distribution of those samples."
And if we look down at the procedure, we see that there is a different sampling procedure for Chinese number 1, Chinese number 3, and Australian ore sampling procedure and for Chinese number 2 sampling procedure; do you see that?
A. Yes.
Q. And why would there be a difference in those two sampling procedures?
A. Because there's a higher frequency of sampling the Chinese number 2 compared to Chinese number 1, number 3 and Australian ore.
Q. Why is there a higher frequency?
A. It's my understanding that that was a requirement from Johnson & Johnson.
Q. The Bobcat scoop that is referenced here in 4.1.2, do you have any knowledge as to how much a Bobcat scoop holds? How many ounces?
A. Ounces?
Q. Pounds? Tons?
A. Yeah. A Bobcat -- well, you grew up on

Page 494

a farm, I think you mentioned. The skid-steer loader -- a Bobcat is a brand name much like Xerox is what we call a photo copier. But it's a skid-steer loader. The bucket width of a skid-steer, if you're operating the controls, the side of it extends -- the bucket width is probably about that wide at least (indicating), you know. Is that four feet or so?
Q. Sure.
A. And I would estimate that it's probably -- the bucket itself is maybe 30 to 36 inches deep and 30 inches high. So you can get a very big scoop of material from that.
Q. Turn to the second page for me. Under section 4.3.4, this is the distribution of samples for various testing.
And we talked a little bit earlier about Houston, right? Houston being the place where the Chinese ore was sent in the U.S.?
A. Yes.
Q. Okay. And so 4.3.4 indicates that "The Houston lab tech will make a composite from the three 5-gallon samples turned in." And that "composite will be placed in a quart-sized Ziploc-type bag and will be picked up by an

Page 495

approved contract laboratory for further analysis"; did I read that correctly?
A. Yes.
Q. Is it fair to say that of the amount collected in this sample procedure, based on the several tons that are collected in each shipment, that a quart-sized Ziploc-type bag is what goes to the lab for testing?
A. Well, you said "several tons." These -- we're taking a Bobcat scoop from every other truck in a shipment. If a shipment comes in that's 10,000 tons, that's 500 scoops of a skid-steer loader. That's much more than several tons.
Q. Okay. And from that, a quart-sized Ziploc baggie is what's taken for testing for further analysis, correct?
A. Well, from -- I mean, you skipped over a lot of the procedure, but in the end, a representative composite of that is -- what did you say, a quart-sized bag?
Q. That's right. A quart-sized Ziploc bag.
A. That's what it says, yes.
Q. And that is what Imerys determined was a representative sample of the many, many tons we just discussed?

Page 496

A. Yes.
Q. I'm going to mark and hand you Exhibit 63.
(Exhibit 63 was marked for identification.)
Q. (By Ms. Scott) This is the Imerys Houston operations from 2013. I failed to mention that Exhibit 62 was the operations -- the sample procedures for Chinese crude ore from August 2008, okay?
And this is the sampling and testing on crude ore and finished product, dated May 15, 2013; do you see that?
A. For USP and FCC sampling.
Q. Okay. And what is USP/FCC?
A. USP stands for United States Pharmacopeia, and FCC is the Food -- Food and Chemicals Codex.
Q. Okay. And this, again, is crude ore coming from China and going to Houston, correct?
A. I need to review this.
Q. And I should ask you if you've ever seen this document before.
A. Yeah, I'm pretty sure I have. And this is Version 1. I was going to say, or perhaps a different version of it. This is Version 1, unless

Page 497

there's a later version and that's what I saw. I don't know.
Q. Okay. And much like the document we just looked at, this details a procedure of collecting scoops with a Bobcat to eventually, through various processes, get it down to a portion that can be sent off to a lab for sampling; is that fair?
A. Yeah. But it references Chinese number 1, Chinese 3, Chinese 4, Chinese 5 and Australian A1. This is not about Chinese number 2.
Q. Page 2 is, section 4.2.
And, again, here, the procedure, we start with a Bobcat scoop. We go through several processes, multiple, multiple tons. And at the end, if you look at number 9 under the procedures, step number 9, we see "The Lab Tech will send a quart-size Ziploc-type bag with the AFG grind to Intertek Laboratory for USP/FCC testing as per protocol"; did I read that correctly?
A. "As per attached protocol xxxxx."
Q. Right. So is it fair to say that, like in the document we saw before, from the many tons collected from the Chinese ore shipment that, in the end, a quart-sized Ziploc-type bag is what goes

Page 498

to the lab tech for testing for hazardous contaminants?
A. For what?
Q. Hazardous contaminants.
MR. PROST: Objection.
A. The -- I'm not sure what you mean by "hazardous." It goes to Intertek for USP and FCC testing.
Q. (By Ms. Scott) Okay. And would USP and FCC testing include testing for hazardous contaminants?
MR. PROST: Object to form.
A. It's been a long day. I can't recall the parameters that we're measuring. Iron is one of them that I recall, acid solubles, soluble salts. I don't know those to be hazards.
Q. (By Ms. Scott) Let's look at the last sentence in step 9 on page 2 of Exhibit 63. The last sentence reads, "The AFG grind is used since it will show contaminants easier than the RM grind."
Does that help you understand that that Ziploc-type bag is going to be tested for hazardous contaminants?
MR. PROST: Object to form.

Page 499

A. This doesn't say "hazardous contaminants."
MS. SCOTT: Okay. What's our time?
VIDEOGRAPHER: So we have six hours, 48 minutes.
MS. SCOTT: Can we take a quick break?
VIDEOGRAPHER: Off the record at 6:26.
(Recess taken.)
VIDEOGRAPHER: We are back on the record at 6:43.
Q. (By Ms. Scott) Mr. Downey, in April 2001, was Imerys supplying talc for cosmetic purposes to J&J?
A. April 2001?
Q. '1. Mm-hmm.
A. That would have been Luzenac America, yes.
Q. Luzenac America, but Imerys, essentially?
A. Yes. Yes.
MS. SCOTT: We are going to late-mark this exhibit because we're getting paper copies of it as we speak, but -- and I'll let you look at the entire document, but this is an interoffice memorandum that we're going to mark as Exhibit 64

Page 500

to your deposition. And this is an April 3rd, 2001, interoffice memorandum from R.J. Zazenski. Who's that?
MR. SILVER: First we need -- can you just give me the Bates number?
MS. SCOTT: Yes. Sorry. Oops. Maybe.
MS. O'DELL: I can help on that. IMERYS 460527.
MR. SILVER: Thank you.
Q. (By Ms. Scott) Who is Mr. Zazenski?
A. Can you blow it up? Because I can't see it from here.
MR. PROST: I'm sorry. Did you say copies are being made?
MS. SCOTT: Yes.
MR. PROST: I sure would like to have a copy of that as you're questioning him about it. I can't read that either. How long is it going to take you --
MR. SILVER: Well, I was intending that you were going to show him the screen.
MS. SCOTT: I am.
MR. SILVER: Okay. Fine.
MR. PROST: As long as I can see the document to read it.

Page 501

MS. SCOTT: Sure.
Q. (By Ms. Scott) Who is Mr. Zazenski?
A. Mr. Zazenski was director of product safety for Luzenac.
Q. Okay. And Mr. Downey, can you read the highlighted paragraph in that document, please?
A. First I want to get familiar with the doc.
(Document reviewed.) The highlighting is --
Q. Well, before you do that, let me read the subject of the document here. It is, "Summary of Asbestos Testing - North American Operations," correct?
A. Yes.
Q. And if you can read that first paragraph in, please?
A. "There is no standard protocol for sampling and testing talc products from North American mining and milling operations to confirm the absence of asbestos. Presently, each location samples and tests as follows."
Q. Okay. Mr. Downey, is it your recollection that in April 2001 that there was no standard protocol for sampling and testing talc products for North American mining and milling

Page 502

operations to confirm the absence of asbestos?
MR. PROST: Object to form; outside the scope. This is Julie Pier's designated area for testimony.
MS. SCOTT: Well, it's asking about -- there's -- it's talking about the protocol for sampling. I'm happy to ask it to narrow it to sampling.
A. What was the question?
Q. (By Ms. Scott) Mr. Downey, is it your recollection that in April 2001 that there was no standard protocol for sampling talc products from North American mining and milling operations to confirm the absence of asbestos?
A. It's my understanding that, in Vermont, there were a number of standard operating procedures that we've already looked at today.
Q. But you said earlier that Mr. Zazenski is -- what was his title?
A. Does he give his title at this time?
Q. He doesn't give his title, but what do you recall his title being in 2001?
A. I don't know about 2001, but Mr. Zazenski, at least at some period of time, was the director of product safety, I think was his

Page 503

title.
Q. Okay. And do you have any reason to believe that Mr. Zazenski would misrepresent that there was no standard protocol for sampling talc products for North American mining and milling operations to confirm the absence of asbestos?
MR. PROST: Object to form.
A. If you read under "Ludlow/Windsor," it says that "Detailed protocol summarized in attached memo." So there was a protocol for Windsor. So why he stated it the way he said it, I don't know. Maybe he said that -- maybe he meant that not all sites do the same thing.
Q. But what he wrote was that there is no standard protocol for sampling and testing talc products in North American mining and milling operations to confirm the asbestos, correct? That's what the document says?
MR. LOCKE: Objection.
MR. PROST: Object to form.
A. He also wrote, for Ludlow/Windsor, Vermont, "Detailed protocol summarized in attached memo."
Q. I'm not asking about that.
A. "The strict protocol is a result of J&J

Page 504

requirements (Windsor Minerals purchased from J&J in 1989)."
Q. Can we agree that the first sentence of this document says what it says?
A. It says what it says, and it also says --
Q. Thank you.
A. -- below that there is a detailed protocol summarized in the attached memo, that it was a strict protocol as a result of J&J requirements.
MS. SCOTT: Okay. That's all.
MS. O'DELL: Let me just state for the record we should know what the exhibit number this would be.
MS. SCOTT: Yes. This would be Exhibit Number 64. Just one second. We don't have to go off the record.
(Pause.)
MS. SCOTT: Okay. That's all. That's all the questions I have for you.
THE WITNESS: Okay.
VIDEOGRAPHER: Just for the record, it is now 6:50 p.m.
MR. PROST: So I don't need a break. I do

Page 505

have some questions, but does Johnson & Johnson or PCPC -- I guess --
MR. SILVER: It's you first.
MS. O'DELL: Me first?
MR. SILVER: Yeah.
MS. O'DELL: I'm ready to go right into it if everybody else is.
EXAMINATION
BY MR. PROST:
Q. Hello, Mr. Downey.
A. Hello again.
Q. So we just completed two days of your testimony by the plaintiffs' counsel and 14 hours of testimony; is that correct?
A. Yes.
Q. I just have a few follow-up questions that I would like to ask you regarding some of the questions they asked. But first, I thought yesterday I heard you say, maybe on one occasion, that grade 25 talc came from Vermont. I think you may have been mistaken.
A. If I said that, I was mistaken. Grade 25 has been a product from Houston based on Chinese talc.
Q. And the grade of talc that would have

Page 506

been supplied from Vermont would be what grade?
A. Grade 66.
Q. All right. Now, yesterday, Miss O'Dell asked you some questions, and there was some back-and-forth about a term "asbestos-free." And as I recall, she asked you whether or not the talc that Imerys supplied to Johnson & Johnson, whether or not it was asbestos-free, and she wanted you to say true or false in response to that. And as I recall, you weren't able to just say true or false.
Do you remember those -- that series of questions and answers?
A. Yes, I do.
MS. O'DELL: Object to the form.
Q. (By Mr. Prost) Why were you not able to give a simple true-or-false answer to the question of "asbestos-free"?
A. Well, I was trying to be scientifically accurate, perhaps hypertechnical, but it was the conjunction of the terms "certified" and "asbestos-free." That's not the language that we use in our certification. But if you're asking me if our product contains asbestos, no, it does not.
Q. (By Mr. Prost) All right. So am I correct that you were trying to answer the question

Page 507

under the context of the testing methodologies and regulatory requirements with respect to testing of talc?
MS. O'DELL: Object to the form.
A. Yes.
Q. (By Mr. Prost) By not giving a simple true-or-false answer to that question, were you in any way implying that there might be asbestos in the talc that Imerys has supplied to Johnson & Johnson dating back to 1989?
MS. O'DELL: Object to the form.
A. No, not at all.
Q. (By Mr. Prost) And, in fact, does Imerys certify to Johnson & Johnson whether or not there is asbestos in the talc that it supplies to Johnson & Johnson?
A. We certify that there is not asbestos in our product.
Q. And is that something that Imerys, the company, stands behind?
A. Yes, we do.
Q. And is that something that the testing results that Imerys has done dating back to 1989 supports?
MS. O'DELL: Object to the form.

Page 508

A. Yes, it does.
Q. (By Mr. Prost) Now, over the course of the last two days and 14 hours of questions by the plaintiffs' counsel, they've shown you, I think, as many as 60 exhibits or so of documents. And some of them were from some of the mines from Vermont.
Do you generally remember that?
A. Yes.
Q. And sometimes Miss O'Dell would show you portions of the documents and read to you words from the documents, and that -- I just have a couple of questions about some of those words, okay?
A. Okay.
Q. I recall her reading several times the word "amphibole" in some of these records.
Let me just ask you, is amphibole asbestos?
A. No. Amphibole is a family of minerals that are very common in the earth's crust.
Q. Am I correct that the asbestiform of an amphibole is actually extremely rare as compared to the common non-asbestiform of an amphibole?
A. Yes. And there are only certain amphibole minerals that, on rare instances, in the right conditions, that can be asbestos.

Page 509

Q. Now, is that a view of you or Imerys, or is this notion that amphiboles are the most common variety is non-asbestiform, is that a generally accepted geologic norm?
MS. O'DELL: Object to the form.
A. It's generally accepted, yes, that amphibole minerals are commonly found and dispersed in cross-grade areas in the earth's crust.
Q. (By Mr. Prost) So when Miss O'Dell shows you a document dating back to maybe the '70s or '80s from maybe one of these mines that J&J approved for source of talcum and reads the word "amphibole," does that have anything to do with asbestos by itself?
A. No.
MS. O'DELL: Object to the form.
Q. (By Mr. Prost) Let me ask you about the word "actinolite." There were times where Miss O'Dell read you the word "actinolite" after some documents that she found dating back to maybe the '70s or '80s.
Actinolite, am I correct, is an amphibole?
A. Yes, it is.
Q. Am I correct that, by far, the most common form of actinolite is the non-asbestiform?

Page 510

A. Yes.
Q. So when you see the word "actinolite" in one of these records or documents, does that have anything to do, by itself, with asbestos?
MS. O'DELL: Object to the form.
A. No.
Q. (By Mr. Prost) And am I correct, also, that tremolite is an amphibole mineral?
A. Yes, it is.
Q. And am I also correct that, by far, the most common form of tremolite is the non-asbestiform?
MS. O'DELL: Object to the form.
A. Yes.
Q. (By Mr. Prost) Serpentinite, sometimes Miss O'Dell would read to you the word "serpentinite" in these records with respect to some of the mines.
Does the word "serpentinite" equal asbestos?
A. No.
Q. Would it even surprise you to see the word "serpentinite" with respect to the Vermont mines?
A. Would it surprise me?
Q. Yes.

Page 511

A. No. It's a -- the deposit -- the source was serpentinite, and so it was -- the talc carbonate was a metamorphic product from the serpentinite, so no, it wouldn't surprise me at all.
Q. Does the word "schist" equal asbestos?
A. No.
Q. Does the word "chlorite" equal asbestos?
A. No.
Q. Does the word "fibrous talc" equal asbestos?
A. No.
Q. Over the last two days, any of the documents that were shown to you by Miss O'Dell or Miss Scott lead you to believe that the talc that Imerys was mining and supplying to Johnson & Johnson, that it contained asbestos?
MS. O'DELL: Object to the form.
A. No.
MR. PROST: Those are all the questions I have. Thank you.
MR. SILVER: Hold on one second, before we close. Can we go off the record? I just want to step outside, two seconds, and then I'll be right back.

Page 512

MS. O'DELL: Yeah, that's fine. It won't be a surprise I'll have a minute or so --
MR. SILVER: I was going to say. Get 6 minutes and 43 --
VIDEOGRAPHER: Hold on. Hold on. Off the record at 6:58.
(Recess taken.)
VIDEOGRAPHER: Back on the record at 6:59.
EXAMINATION
BY MR. PROST:
Q. Mr. Downey, over the last two days, you've been shown a number of drill core logs.
A. Yes.
Q. And I think some of them even dated back to 1972 or 1973.
A. Yes.
Q. And you were shown some of the results in those logs.
I guess my general question to that is, without having to go back to them, is there anything that you saw in any of the core logs, whether or not they were Johnson & Johnson's from the '70s, whether or not they were drill core logs of Imerys from the 1990s or 2000s, was there anything that you saw that led you to believe that

Page 513

the talc that Imerys was mining to supply to Johnson & Johnson contained asbestos?
MS. O'DELL: Object to the form.
A. No.
MR. PROST: That's all I have.
MS. O'DELL: Give me -- can we go off the record?
VIDEOGRAPHER: Off the record at 7 p.m.
(Recess taken.)
VIDEOGRAPHER: We are back on the record at 7:09.
EXAMINATION
BY MS. O'DELL:
Q. Mr. Downey, you were asked a series of questions about --
A. Are we back on?
Q. Yes. Are you ready, Mr. Downey?
A. Yeah, I am.
Q. You were asked a series of questions about -- first I'll bring your attention to the word "amphiboles." You were asked the question about the type of rock referred to as "amphibole."
I understood your testimony to be the amphibole, as a mineral, is something -- or a type of rock is something that's very common, correct?

Page 514

A. Yes.
Q. And you indicated that just because something is termed an "amphibole," it does not mean that it is asbestos; do you recall that?
A. Yes.
Q. Would you agree with me that there is a form -- there are forms of amphibole minerals that are, in fact, asbestiform? Correct?
A. There are rare amphibole minerals that are asbestos.
Q. So the answer to my question is "yes"?
MR. LOCKE: Objection.
MR. PROST: Join.
A. You used the word "asbestiform." And I'm -- I'm acknowledging that there are rare -- or there are amphibole minerals, there are a few amphibole minerals that, in rare form, based on their crystal habit and morphology, that are asbestos, and those would be actinolite asbestos, tremolite asbestos and anthophyllite asbestos.
Q. (By Ms. O'Dell) And in relation to serpentine, you were asked a number of questions by Imerys counsel regarding serpentine.
And I'll ask you, isn't it true that there are minerals by virtue of the fact that they have a

Page 515

certain morphology and crystalline structure that -- back up and try again.
In relation to serpentine, are there certain subsets of serpentine minerals that, by virtue of their crystal-like structure, their fiber-like morphology, they are regarded as asbestos? True?
MR. PROST: Object to form. I said "serpentinite," to clarify.
Q. (By Ms. O'Dell) Do you remember my question?
A. If you can read it back? No.
Q. In regard to serpentinite minerals, there's a subsection of those type of minerals that due to their crystalline structure and morphology are considered to be asbestos, true?
MR. LOCKE: Objection.
MR. PROST: Join.
A. You were talking in the plural. It's my understanding that chrysotile is the asbestos variety of the serpentine minerals, and it's rare.
Q. (By Ms. O'Dell) Okay. I'd ask you to turn to Exhibit 11, please. Do you recall this exhibit, Mr. Downey? It relates to an evaluation of the talc mines in Vermont.
Do you recall that?

Page 516

A. I think it includes talc mines in Vermont and other mines as well.
Q. And I asked you a series of questions as they relate to the talc mines in Vermont.
Do you recall that line of questions?
A. Not specifically at this time. I remember seeing this document. I don't remember the questions you asked.
Q. And this is a geological analysis. You recall this. We established this on the record. A geological analysis of the talc mines in Vermont as well as some other parts of the country, but it certainly covered Vermont, true?
A. If you say that we established it was a geological analysis, this is titled "Cyprus Ore Reserve Evaluation."
Q. Okay. Turn to page 2 of this document. It says, "Fibrous minerals"; do you see that at the bottom of the page?
A. Yes.
Q. "Tremolite and actinolite are ubiquitous in several zones of the Vermont mines"; do you recall that?
A. Yes.
Q. Fibrous tremolite is asbestos, correct?

Page 517

MR. PROST: Object to form.
A. It actually depends on the crystal habit, the crystal morphology. Just the term "fibrous" alone and "tremolite" together, to me, does not indicate asbestos.
Q. (By Ms. O'Dell) Maybe it doesn't indicate it's asbestos for sure after having been confirmed by TEM or some other type microscopic analysis, but in general, tremolite asbestos is a fibrous mineral, true?
MR. PROST: Object to form.
A. Tremolite asbestos is a mineral that has very distinguishing characteristics about its fibrous nature as well as the exhibition of the fibers, that they are easily separable. They're flexible. They're chemically and thermally resistant. So just the term "fiber" alone, to me, does not indicate it's asbestos.
Q. (By Ms. O'Dell) Okay. Well, do you recall Exhibit 34? We went over that earlier today. It should be in front of you.
A. I have 37.
MR. SILVER: 34 was on one of . . .
Here's 34.
Q. (By Ms. O'Dell) 34, Exhibit 34, do you

Page 518

recall that?
A. Yes.
Q. Technical report. It's from the Argonaut historical development drilling sample. We went over this in detail. R98-9. And in this instance, this sample from Argonaut confirmed -- excuse me -- the analysis of this sample from Argonaut confirmed that tremolite was present in the sample and was roughly approximately to be 4 percent of -- and I'm adding these words -- 4 percent, and that would be 4 percent of the sample, correct?
A. It says that tremolite was detected. It says 4 percent. There's no indication that this was ore. It says it was from a drilling sample. And it doesn't have any mention of asbestos. It says "tremolite."
MR. SILVER: Leigh, time's up. You can ask one more question, but we actually let you run over.
MS. O'DELL: Fair. Part of my time was looking for the exhibit, but okay.
MR. SILVER: That's why I let you go over.
Q. (By Ms. O'Dell) It's your testimony on behalf of Imerys that this test result that states

Page 519

it confirmed that the sample from this core was tremolite does not mean it is asbestos tremolite; is that your testimony?
A. As written here, it says "tremolite."
Q. And in your mind, unless the word was "tremolite with asbestos," that would -- that -- let me back up and try again, the last question.
In your mind, unless "tremolite" is coupled with the term "asbestos" in the same sentence, it's not asbestos.
Is that your opinion?
MS. O'DELL: Object to form.
Q. (By Ms. O'Dell) Or is that your testimony on behalf of Imerys?
A. You were asking me specifically about this document. This has no other reference other than "tremolite."
Q. (By Ms. O'Dell) And in your mind, unless "asbestos" had followed "tremolite" in this PLM analysis, that does not mean it is asbestos, correct?
A. I'm sorry. The -- there's no other characteristic described, whether it says "asbestos" or if it was describing the crystal habit and the morphology -- if that was there, I

Page 520

would be able to say yes or no, but just "tremolite" on its own does not, to me, indicate asbestos. I'm sorry. I can't agree to that.

MR. SILVER: Time's up.

MS. O'DELL: No more questions.

MR. PROST: Can I just have a minute to see if I have anymore, talk to counsel?

MS. O'DELL: Okay.

VIDEOGRAPHER: Off the record at 7:21.

(Recess taken.)

VIDEOGRAPHER: We are back on the record at 7:23.

MS. O'DELL: No more questions.

VIDEOGRAPHER: Okay. That concludes today's proceeding, and we are off the record at 7:23.

(Exhibit 64 was marked for identification.)

(Whereupon, the deposition was concluded at 7:23 p.m. on August 8, 2018.)

Page 521

I, PATRICK DOWNEY, do hereby certify that I have read the foregoing transcript and that the same and accompanying amendment sheets, if any, constitute a true and complete record of my testimony.

_____
PATRICK DOWNEY

( ) No Amendments
( ) Amendments Attached

Subscribed and sworn to before me this _____ day of _____, 2018.

Notary Public: _____
Address: _____
_____
My commission expires: _____
Seal:

MLG

Page 522

REPORTER'S CERTIFICATE
STATE OF COLORADO) ss.
COUNTY OF DENVER)

I, MELANIE L. GIAMARCO, do hereby certify that I am a Registered Professional Reporter and Notary Public within the State of Colorado; that previous to the commencement of the examination, the deponent was duly sworn by me.

I further certify that this deposition was taken in machine shorthand by me at the time and place herein set forth, that it was thereafter reduced to typewritten form, and that the foregoing constitutes a true and correct transcript of the proceedings had.

I further certify that I am not employed by, related to, nor of counsel for any of the parties herein, nor otherwise interested in the result of the within litigation.

In witness whereof, I have affixed my signature this 21st day of August, 2018.

Melanie L. Giamarco
Registered Professional Reporter
Registered Merit Reporter
Certified Realtime Reporter

My commission expires: August 21, 2021
Notary ID: 20014025991